No. 98-1799

IN THE

Supreme Court of the United States

KNOX COUNTY EDUCATION ASSOCIATION,

Petitioner,

v.

KNOX COUNTY BOARD OF EDUCATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Fourth Amendment prohibits post-offer, pre-employment suspicionless drug testing of new public school teachers whose profession is highly regulated and who, by state law, stand *in loco parentis* with the responsibility to protect students from harm and secure order in the schools.

2. Whether the Fourth Amendment requires a statistical nexus between student injuries and drug impaired teachers or a pronounced drug problem among a school system's teachers to justify post-offer, pre-employment drug testing of new public school teachers responsible for the safety, education and welfare of public school students subject to compulsory attendance.

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CONSTITUTIONAL, STATUTORY AND POLICY PROVISIONS

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, ...

Amnd. IV.

Certain Tennessee statutes also govern this case. Those provisions are found at Code of Tennessee § 49-2-203 (powers and duties of the Board); Code of Tennessee, § 49-5-501, *et seq.* (teacher tenure); Code of Tennessee, § 49-6-4011, *et seq.* (student and employee safe environment act); Code of Tennessee, § 49-6-4201, *et seq.* (school security act); Code of Tennessee, § 49-6-4301, *et seq.* (duty to report student offenses); Code of Tennessee, § 49-6-3401 (suspension of students). These statutes are reproduced at App. 33a through 87a The Knox County Drug-Free Workplace Policy is reproduced at App. 1a through 32a.

STATEMENT OF THE CASE

Petitioners argue that the court below based its decision solely on common sense and intuitive understanding. To construe passing comments in one paragraph and one footnote of a twenty-four page opinion as bearing the weight of the Sixth Circuit's ruling defies credibility. The record evidence cited by the court and set forth below supports the Sixth Circuit's considered opinion and renders it consistent with this Court's rulings on suspicionless drug testing.

On or about June 1, 1994, the Knox County Board of Education adopted the "Drug-Free Workplace Substance Abuse Policy" for implementation in the Knox County School System. (Anderson, JA at 995). The Policy establishes a comprehensive

drug and alcohol testing program for the Board of Education's employees.[1] The first goal and objective of the Policy is "[t]o establish, promote, and maintain a safe, healthy, working and learning environment for employees and students." (JA 1005; App. 2a).

Consistent with this goal, the Policy divides the tested employees into two distinct groups: (1) those who may be tested only for reasonable suspicion of drug or alcohol impairment while at work (all employees); and (2) those who may be the subject of suspicionless testing, namely, certain "safety-sensitive" employees. Suspicionless testing may arise under three circumstances: persons hired for positions designated "safety-sensitive" are tested post-offer, pre-employment; persons transferring to safety-sensitive positions are tested pre-transfer; persons holding safety-sensitive positions are tested upon return to duty after undergoing rehabilitation. (App. 3a-4a, 9a-14a).[2] The policy does not call for random testing.

The Policy designates certain positions as "safety-sensitive" and thus subject to post-offer, pre-employment drug and alcohol testing. Those positions are principal, assistant principal, teacher, traveling teacher, teacher aide, substitute teacher, and school secretary (hereinafter, "teachers").[3] These positions are considered "safety-sensitive" by the Board because these

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1. The Federal Anti-Drug Act, 41 U.S.C. § 702, requires federal grant recipients, such as public schools, to establish a drug-free workplace.

2. Petitioners contest the post-offer, pre-employment suspicionless drug testing. Drug testing is not the only feature of the policy, however. The Policy prohibits being under the influence of an illegal drug, alcohol or a prescription drug "above the level recommended by the prescribing physician" while on duty or at a system-approved or school-related function; requires reporting convictions under any criminal drug law; provides rehabilitation; advises of disciplinary action; and contains procedures for maintaining confidentiality. (JA 1005; App. 5a-9a, 14a-21a).

3. School secretaries frequently dispense medication to students.

employees have duties where they supervise children and are responsible for their safety.[4] (Staley, JA 968-969). In the Board's view, any momentary lapse in attention or judgment on the part of these employees could result in an immediate and serious threat to a child's safety.

Any momentary lapse in teacher attentiveness is likely to result in an immediate and serious threat to a child's safety because threats to students' safety already exist in the Knox County schools. With respect to assault, in the 1992-93 school year, there were 61 assaults by students on students and 17 assaults on teachers; in 1993-94, there were 68 assaults by students on students and 9 assaults on teachers; in 1994-95, there were 44 assaults on students and 7 on teachers; in 1995-96, there were 16 aggravated assaults on students by students, 20 assaults on students, 5 assaults on principals by students and 9 assaults on teachers or teacher aides by students. (JA 1117, 1122, 1141). With respect to weapons, 1993-94 saw the greatest number of weapons at school, namely 73, of which 49 were knives. (JA 1117). In 1995-96, twenty-eight (28) weapons were recovered, 19 of which were knives. (JA 1117). With respect to drugs, in 1995-96, seventy-one (71) incidents of substance abuse by students occurred at school during the school day or at school sponsored on-campus functions, 44 of them involved marijuana. (JA 1117).

According to the Knox County Schools Chief of Security, Steve Griffin, teachers and principals are "most definitely"

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4. These employee positions were deemed "safety-sensitive" by the U.S. District Court for the Eastern District of Tennessee in its April 14, 1994, decision in the first case brought by the teachers' union challenging the drug testing policy. *See Knox County Education Association v. Knox County Board of Education*, No. 3-91-cv-72). (JA 267-292). In the first case, the trial court found the procedures wanting. Consequently, the Board revised its policy on June 1, 1994, consistent with the district court's findings and rulings. After the Board revised its policy, the teachers' union brought the instant challenge.

important to school safety and security. (Griffin, JA 937). There are 53,000 students in the Knox County School System. (Sparks, JA 855). Of those, 9,343 are special education students. There are 88 schools in the Knox County School System and only 22 full-time uniformed security officers and 4 investigators. (Griffin, JA 931-932). Thus, all schools in Knox County do not have a security officer. (Griffin, JA 932). Even in those schools where there is a uniformed officer, the majority of information concerning students' violent behavior and drug or weapon possession comes to the attention of the school security officer through the principal's or teachers' observations. (Griffin, JA 935-937; JA 1122). According to the Chief of School Security, "[i]f it weren't for the teachers we wouldn't have these reports [of student violence, drug or weapon possession] in front of us." (Griffin, JA 943; JA 1122 and 1141). Thus, teacher alertness constitutes a frontline defense for student safety.

The testimony of Ms. Betty Sue Sparks, the Human Resources Director for Knox County Schools and a former principal, teacher and special education teacher at elementary, middle and high school, shows that teacher alertness is key not only to student safety but also to a positive school experience. (Sparks, JA 812-814; 871-877). Consider a typical elementary school day as described by Mr. Sparks. According to Ms. Sparks, teachers have bus, cafeteria and recess duty. Teachers present lessons, monitor group activities, take students to the rest room, monitor their breaks, and take students to the library. Afternoon activities include more lessons or special activities. Teachers monitor students on specific behavior contracts and often fill out daily reports for parents about their children's behavior. Teachers are expected to give positive reinforcement to the children as well as discipline. (Sparks, JA 872-877). The overall responsibility of the teacher is to ensure that students with whom the teacher is entrusted have a safe, positive, meaningful school experience. (Sparks, JA 878). Drug and weapon detection — with respect to student possession — is also one of the responsibilities of the Knox County teachers. (Sparks, JA 890).

For these reasons, it is "important to have a sober, functioning teacher in every classroom, doing the best he or she can do for the children." (Sparks, JA 878).

Knox County tests for drugs that impair teachers' thoughts and reactions in the classroom. (Sparks, JA 909-910). With respect to the teaching of children, Ms. Sparks stated: ". . . I have found that it is vitally important for me to be on my toes every minute with every youngster that I am working with." (Sparks, JA 987). The emotional and physical health and well-being of the students is of paramount concern. (Sparks, JA 908).

Underlining the importance of teacher alertness, Ms. Henrietta Grant, a Knox County principal of a 763-student high school, the smallest high school in the county, described the hallways in her high school when all the students are changing classes as a "mad house." (Grant, JA 948-950). Ms. Grant pointed out that in high school teachers monitor the halls during class changes and monitor the cafeteria while some 300 students are eating lunch. (Grant, JA 948-950).

The typical day of a high school teacher is no less hectic than that of an elementary school teacher. High school teachers teach three ninety-minute periods and monitor the halls, the cafeteria and student assemblies. (Grant, JA 952-953). When asked about teacher and principal responsibilities, Ms. Grant said

> I think they're responsible for everything. I think that you're responsible for the students' well-being, you're responsible for their learning, you're responsible for them getting off the bus or however they get to school, you're responsible while they're there, you're responsible to see that they leave the school safely. And I think you're responsible for the students the entire time they're in the building. And outside the building, I might add.

(Grant, JA 953-954). More poignantly, when asked for the reasons why Knox County Schools needs a drug-free workplace policy that includes teacher testing, Ms. Grant said

> I think that my kids are the most important things in our lives, and that we should be as clear-headed as we can be when we're working with those students. I think that we're responsible for them. And I don't feel that the teachers, anybody who works in the school should not be clear-headed and clear-thinking when they're working with them.

(Grant, JA 953-954). When asked why clear-headedness is important for teachers and principals, Ms. Grant said

> [w]ell, many reasons. Safety: I would not want a person working with a child whose reaction time had been . . . thrown off with a substance. I think that it's true that you react differently when you're clear-headed as opposed to when you're not clear-headed, and I would hope that all of my teachers would be able to act as quickly and as . . . they'd be able to act in such a manner that would protect the children if that were called for.
>
> . . .
>
> You know, I just want my folk to be as clear-headed as they can be. Children are smarter than we are, they out-think us, and it seems to me that we have to be careful about being competent enough to work with them. They're just smarter than we are, they're thinking all the time. At the best you can do it's hard to keep up with them.

(Grant, JA 954-955).

During the school year, children spend the major part of their waking hours at school. (Grant, JA 955). Echoing the

testimony of Ms. Grant, the District Court took judicial notice that children are our most important asset and that teaching children is important. (JA 956). In fact, the District Court noticed that "[t]he most important thing in the world is getting our children educated." (JA 956). With respect to the importance of teachers, Ms. Grant testified that teachers are "**the**" role models for children. (Grant, JA 957). Finally, when asked if even a momentary lapse of attention on the part of a teacher could have serious, if not disastrous, tragic consequences for a student, Ms. Grant answered: "Without a doubt." (Grant, JA 958-959).

The potential for tragic consequences at school was also highlighted during the testimony of Mr. Anderson, the chairman of the Knox County Board of Education at the time the Board adopted the 1994 Policy and a former elementary and high school teacher. (Anderson, JA 994-998). Describing a time when he prevented a fatal knifing, Mr. Anderson said

> . . . when I was a teacher, I taught at Austin-East High School, I was on bus duty. And a lot of times in schools, you have less structured situations; bus duty, lunch duty, chaperoned dances, trips. Well, there was a bus came in, we were on split campuses and a bus came in. There was something going on on the bus and a child got off the bus and told me there was a fight going on. I got on the bus, and as I was working my way back to the middle of the bus where the fight was going on I saw one young man pull a knife and draw back to stab another young man.
>
> I grabbed the guy, he didn't see it, and pulled him back, and the knife caught the kid right below his heart, in the side, and punctured him there. If I had been delayed one second or been one-tenth of a second slow reacting, he probably would've been stabbed in the heart.

> And that, as always, I think about it every time we have an opportunity to make sure that everybody's alert, that everybody's judgment's not impaired. And it's very important, I just think it's very important for that reason.

(Anderson, JA 996-997). With respect to momentary lapses of attention, Mr. Anderson said

> [o]h, I think momentary lapses are more important than — the most important situation. Because things happen so fast when you put seven hundred teenagers in a school, you know, everyone together, from all parts of the County.

(Anderson, JA 997). As Mr. Anderson concluded, in light of the total school experience, ". . . a lot of things happen in schools." (Anderson, JA 998).

Research indicates that twenty-five percent (25%) of the population uses dangerous drugs and that many have used drugs on the job. (JA 812, 1309). With respect to the teaching profession in particular, the District Court took judicial notice that teachers are no different than any other profession. (JA 859, 879-880). Likewise, Ms. Sparks, the Human Resources Director, testified that she had no indication to believe that teachers are any different than any other workplace or profession in our society today. (Sparks, JA 880).

To ensure privacy, confidentiality, integrity and reliability, the Policy establishes a testing protocol, appoints a physician as the Medical Review Officer, assures confidentiality, and incorporates the procedures set forth in the Medical Review Officer Manual published by the National Institute on Drug Abuse, U.S. Department of Health and Human Services. (JA 1005; App. 17a-30a). The Policy requires that the laboratory collecting the urine specimens and performing the tests do so in accordance with applicable federal Department of

Transportation procedures to insure privacy, integrity, validity and reliability. To ensure privacy, the Policy provides for non-observance collection, unless otherwise warranted by specified scientific findings concerning a specific sample. The drug testing protocol requires the Enzyme-Multiplied Immunoassay Technique (EMIT) screen to be followed by the gas chromatography/mass spectrometry (GC/MS) technique for those specimens identified as positive under the EMIT screen. (JA 1005; App. 21a). The Policy provides for the confidentiality of results and sets out specific confidential procedures for the communication and retention of said results, separate from the employee's personnel file.[5] (JA 1005; App. 17a-30a).

Recognizing the privacy interests of the employees, the Policy contains strict requirements with regard to confidentiality. (JA 1014). The Policy protects the confidentiality of the drug testing results which

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5. The Policy also provides for alcohol testing. Under the written Policy, the alcohol testing procedure involves the administering of a breath analysis test by the Sheriff's Department, followed by an alcohol urine assay EMIT screen followed by a confirmatory gas chromatography test on positive screens. The breath test is positive at .02; the EMIT and GC/MS tests are positive at .04. Like the drug testing procedures, the alcohol testing procedures follow the same privacy and confidentiality protocol. (JA 1018-1019). Trial testimony revealed that the Sheriff's Department no longer operates the Breathalyzer test for the Knox County School System. In practice, in cases of reasonable suspicion, school security officers, employed by the Board and certified to operate the Breathalyzer, operate the school system's own Breathalyzer. The School Security Office is not located in the Sheriff's Department. (Griffin, JA 1018-1019). Under the Policy, those results are then conveyed to the Director of Personnel who, at that point, follows the procedure for obtaining a urine specimen. (JA 1014). The Sixth Circuit remanded the alcohol testing procedure to the District Court to determine whether the blood alcohol level of .02 is reasonably related to the purpose of the testing. 158 F.3d at 386. The Board does not appeal this ruling.

> will be released by the MRO and the Director of Personnel only upon the written consent of the individual, except the results may be released and relied upon by the Knox County Board of Education in any administrative or court action by the employee involving the drug test, or any discipline resulting from a violation of this policy, including employment and court proceedings.

(JA 1016-1017). The Policy requires the MRO to maintain the substance screens in a secure manner and to disclose the results to the Director of Personnel only to the extent necessary to address any work-related safety risks occasioned by either the drug or alcohol use. (JA 1014). The MRO reports to the Personnel Director as follows: if the test is negative, he reports a negative; if the test is positive for an illegal drug, the MRO identifies the drug; if the test result is positive for a prescription drug and the employee has no prescription, the MRO identifies the drug; if, however, the test result is positive for a prescription drug within prescription level ranges and the employee satisfies the MRO that he has a valid prescription, the MRO tells the Director of Personnel only that the employee had a prescription drug but does not identify the drug; in this latter case, the employee is actually considered "negative." (JA 1016). If substance screening shows a confirmed positive result for which there is no current physician's prescription, the MRO may request a second confirming test on that specimen. (JA 1016).

In the case of post-offer, pre-employment testing for new teachers, applicants are given a copy of the Policy in advance of the physical. Applicants sign an acknowledgment of its purpose prior to substance screening and consent to the summary result being transmitted to the MRO and, if the MRO deems necessary under the terms of the policy, to the Director of Personnel. An applicant refusing to complete any part of the drug testing procedure will not be considered a valid candidate for employment and the refusal is deemed a withdrawal of the

individual's application. The applicant may reapply after one year and show proof of successful rehabilitation. (JA 1007, 1019).[6]

REASONS FOR DENYING THE WRIT

I.

THE FOURTH AMENDMENT DOES NOT PROHIBIT POST-OFFER, PRE-EMPLOYMENT SUSPICIONLESS DRUG-TESTING OF NEW PUBLIC SCHOOL TEACHERS WHOSE PROFESSION IS HIGHLY REGULATED AND WHO, BY STATE LAW, STAND IN LOCO PARENTIS WITH THE RESPONSIBILITY TO PROTECT STUDENTS FROM HARM AND SECURE ORDER IN THE SCHOOLS.

The Sixth Circuit correctly held that the Knox County public school system's post-offer, pre-employment suspicionless drug testing of new teachers does not violate the Fourth Amendment. 158 F.3d 361.[7] Teachers in the Knox County public

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6. With respect to discipline of current employees found under the influence of drugs or alcohol pursuant to reasonable suspicion testing, the policy states that "[e]mployees in violation of the provisions of this Policy will be subject to disciplinary action up to and including termination." (JA 1013). Any disciplinary action must be carried out in accordance with the due process requirements of Board Policy, state law, and the Charters for Knox County, Tennessee, and the City of Knoxville, where applicable. (JA 1021-1022). Petitioners do not challenge the reasonable suspicion testing.

7. As the Sixth Circuit analyzed:

> [i]t is now well-settled that drug testing which utilizes urinalysis is a "search" that falls within the ambit of the Fourth Amendment. *See, e.g., Skinner*, 489 U.S. at 617, 109 S. Ct. 1402 (the collection and testing of urine intrudes upon expectations of privacy in such a way "that these

(Cont'd)

school system, by virtue of their legal obligation *in loco parentis* and their state statutory obligations to protect the safety and welfare of their students, hold "safety-sensitive" positions that justify suspicionless post-offer, pre-employment (not random) drug testing. By virtue of certain student conduct, threats to student safety exist in the Knox County school system and teachers must be alert to those threats. In upholding the Knox County Schools' suspicionless post-offer, pre-employment drug testing of teachers, the Sixth Circuit correctly interpreted this Court's rulings in *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989); *Nat'l Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989); *Vernonia School Dist. 475 v. Acton*, 515 U.S. 656 (1995) and *Chandler v. Miller*, 520 U.S. 305 (1997).

Because it is well-settled that urinalysis drug-testing is a "search" within the meaning of the Fourth Amendment, "it is necessary to balance the individual's privacy expectations against the Government's interest. . . ." *Von Raab*, 489 U.S. at 665. Thus, as this Court directed in *Skinner*; *Von Raab*; *Vernonia* and *Chandler*, the threshold inquiry is whether the Knox County Board of Education has a legitimate governmental interest in

(Cont'd)

> intrusions must be deemed searches under the Fourth Amendment.").

158 F.3d at 371. However,

> the Fourth Amendment does not proscribe all searches and seizures, but only those that are unreasonable . . . *Skinner*, 489 U.S. at 619, 109 S. Ct. 1402 (cites omitted). The reasonableness of a search "depends upon all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself." *United States v. Montoya de Hernandez*, 473 U.S. 531, 537, 105 S. Ct. 3304, 87 L. Ed. 2d 381 (1985) (citing *New Jersey v. T.L.O.*, 469 U.S. 325, 337-342, 105 S. Ct. 733, 740-743, 83 L. Ed. 2d 720 (1985)).

158 F.3d at 371.

controlling the use of drugs by teachers in the workplace. The follow-up inquiry is whether the Board's policy balances the teacher's privacy expectations[8] against that governmental interest.

Inasmuch as the law is well-settled on this issue, and inasmuch as the Sixth Circuit has correctly applied this Court's rulings, further guidance on this subject is not necessary. The instant case is not one for which certiorari is warranted, especially in view of the fact that the duties of public school teachers are governed by state, not federal, law. This Court has recently denied certiorari in two student drug testing cases. *Todd v. Rush County Schools*, 133 F.3d 984 (7th Cir. 1998), *cert. den.*, 119 S. Ct. 68 (1999); *Willis v. Anderson Community School Corp.*, 158 F.3d 415 (7th Cir. 1998), *cert. den.*, 119 S. Ct. 1254 (1999). The Board urges this court to do likewise in the instant case.

A. The Knox County Public Schools Have A Legitimate Governmental Interest In Employing Drug-Free Teachers.

The Sixth Circuit correctly found that there are

> few governmental interests more important to a community than that of insuring the safety and security of its children while they are entrusted to the care of teachers and administrators.

158 F.3d at 375. This government interest is shared by the community:

> Concomitant with this governmental interest is the community's interest in reasonably insuring that those who are entrusted with the care of our children will not be inclined to influence children — either directly or by example — in the direction of illegal

8. Teachers do not challenge the protocol in their petition.

> and dangerous activities which undermine values which parents attempt to instill in children in the home. Indeed, teachers occupy a singularly critical and unique role in our society in that for a great portion of a child's life, they occupy a position of immense direct influence on a child, with the potential for both good and bad. Teachers and administrators are not simply role models for children (although we would certainly hope they would be that). Through their own conduct and daily direct interaction with children, they influence and mold the perceptions, and thoughts and values of children. Teachers and administrators are not some distant societal role models, as in the case of the Georgia political candidates in *Chandler*; rather, on a daily basis, there is a direct nexus between the jobs of teachers and administrators and the influence they exert upon the children who are in their charge. Indeed, directly influencing children is their job.

158 F.3d 361. Tennessee law recognizes this role and imposes certain statutory duties on public school systems and teachers.

1. *By state law, Knox County teachers act in loco parentis and are responsible for the safety of public school students subject to compulsory attendance.*

The Sixth Circuit correctly affirmed the Board's assessment of Knox County Schools as no longer carefree[9] and recognized

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9. Referring to the recent tragic schoolyard shootings in Jonesboro, Arkansas and Springfield, Oregon, the Sixth Circuit observed,

> [i]ndeed we do not have to search beyond recent local and national media headlines to understand that schools are, unfortunately, too often turned into places in which children are subjected to grave and even life-threatening dangers where the split-second vigilance of teachers and

(Cont'd)

the teachers' statutory duty to protect the students committed to its care. (JA 1117, 1122, 1141). In 1981, the State of Tennessee enacted the School Security Act which recognized

> the **position of the schools *in loco parentis* and the responsibility** this places on principals and teachers within each school **to secure order and to protect students from harm while in their custody.** (emphasis added).

Code of Tennessee, § 49-6-4203(b).[10] In that Act, the Tennessee General Assembly expressed its intent "to secure a safe environment in which the education of the students of Tennessee may occur."[11] Code of Tennessee, § 49-6-4203(a). At that time,

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(Cont'd)

> administrators, and the need for clear-headed thinking, is absolutely critical to the safety of the school children.

158 F.3d at 378-379 at 23. More tragically, respondent now adds Paducah, Kentucky, Littleton, Colorado and Conyers, Georgia to this list.

10. This Court has

> acknowledged that for many purposes "school authorities ac[t] *in loco parentis*," *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 684, 92 L. Ed. 2d 549, 106 S. Ct. 3159 (1986), with the power and indeed the duty to "inculcate the habits and manners of civility," *Id.*, at 681, 92 L. Ed. 2d 549, 106 S. Ct. 3159 (internal quotation marks omitted.)

Veronia, 515 U.S. at 655.

11. This Court has held the right to attend a public school is a state-created, rather than a fundamental, federal constitutional right. *See San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973); *Plyler v. Doe*, 457 U.S. 202, 221 (1982). For the most part, public schools are state and local community undertakings. Thus, the State of Tennessee regulates and controls public education, consistent

(Cont'd)

the General Assembly found "a rising level of violent activity and use of drugs is occurring in some public schools . . ." and that "removal of dangerous weapons, drug paraphernalia and drugs from school property is necessary to lessen hazards to students . . ."[12] such that "searches of students themselves may be necessary to protect the larger student body, ..." because "[t]he presence on school property of students with drugs in their bodies may pose a threat to the safety and well-being of that student and other students. . . ."[13] § 49-6-4203(d)(e)(1)(2)(4). Respecting the need for local community control, the Act states

> [i]ndividual circumstances and local particularities require that individual principals must be relied on to exercise their professionally trained judgments

(Cont'd)

with the requirements of receiving certain federal financial assistance. The Tennessee Constitution recognizes the inherent value of education and requires the General Assembly to provide the maintenance and support of a system of free public schools. Tenn. Const. Art. XI, § 12. As a result, public education in the State of Tennessee is a highly regulated state industry. Code of Tennessee § 49-1-101, *et seq.* through § 49-50-1401, *et seq.* State law requires compulsory attendance for children between the ages of seven and seventeen, inclusive. Code of Tennessee § 49-6-3001(c)(1); regulates curriculum and report cards. § 49-6-1001, *et seq.*, § 49-6-1201, *et seq.*, § 49-6-1301 and § 49-6-901; directs the implementation of drug abuse resistance education, § 49-1-402, *et seq.*; provides for school safety and security, § 49-1-214 and § 49-6-4201, *et seq.*; regulates school discipline, § 49-6-4011, *et seq.* and § 49-6-4101; and governs teacher tenure, dismissal and suspension. § 49-5-501, *et seq.* Absent discrimination, the privilege to teach in the public schools is governed by state law. § 49-5-501, *et seq.* *See, e.g.*, 42 U.S.C. § 2000e, *et seq.*; 29 U.S.C. § 621, *et seq.*; 42 U.S.C. § 12101, *et seq.* Petitioner teachers do not allege discrimination in the instant case.

12. The Tennessee legislature saw fit to take these steps in 1981; subsequent events only further support these findings.

13. By analogy, the presence of teachers with drugs in their bodies pose a similar threat.

> in determining what action is appropriate within the provisions of this part; . . . .

§ 49-6-4203(e)(3).[14] Acknowledging that teachers are the first observers of student misconduct, the Act provides that a student may be searched as a result of "information received from a teacher . . ." if such action is reasonable to the principal. § 49-6-4205(a).[15]

The Tennessee General Assembly delegated its power to "provide for the maintenance, support and eligibility standards of a system of free public schools" to local "board[s] of education elected by the people." Code of Tennessee, § 49-2-201, *et seq.*; Tenn. Const. Art. XI, § 12. The Board has the duty to employ teachers eligible for tenure.[16] § 49-2-203(a)(1). Under Tennessee law, new teachers or teachers new to a system serve a three year probationary period before acquiring tenure. § 49-5-504. Even after attaining tenure, a teacher may be dismissed by the Board for "incompetence, inefficiency, neglect of duty, unprofessional conduct and insubordination. . . ." as defined under state law. §§ 49-2-203(a)(7) and 49-5-511(a)(1)(2).[17] Unprofessional

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14. In 1988, the Act was amended to allow drug testing of students upon "reasonable indications." § 49-6-4213. In 1989, students were prohibited from carrying electronic pagers. § 49-6-4214. In 1994, the search of students and student lockers was broadened for weapons and drugs. §§ 49-6-4204 and 4205.

15. By 1996, the General Assembly recommended a zero tolerance policy toward any student who engages in behavior involving drugs, weapons or violence on school property. § 49-6-4216(b). The Knox County Board of Education has adopted such a policy.

16. Subject to state approval, the local board of education has the authority to set standards of employment over and above those required by the state board of education. § 49-5-506.

17. Dismissal or suspension of a tenured teacher requires an extensive fair hearing process and allows judicial review and appeal. §§ 49-5-511, 512, 513.

conduct or "conduct unbecoming to a member of the teaching profession" includes "improper use of narcotics or intoxicants." § 49-5-501(3)(E). By state law, neither a new teacher on probation nor a tenured teacher have an expectation of employment or continued employment if improperly using narcotics or intoxicants.

Under Tennessee law, public school teachers have statutory duties and responsibilities *in loco parentis* to protect the safety of students compelled to attend school. § 49-6-4203(b). Like the railroad employees in *Skinner*, for teachers monitoring students "even a momentary lapse in attention could have disastrous consequences." *Skinner*, 489 U.S. at 628. Like the customs service agents in *Von Raab*, teachers have the statutory responsibility to report student drug and weapon offenses and should have unimpeachable integrity and judgment. § 49-6-4105(a). Like the athletes in *Vernonia*, teachers "go out for the team," expecting their conduct to be scrutinized. § 49-5-501, 511, 512, 153. Unlike the Georgia political candidates in *Chandler*, teachers are not some distant societal role models, but rather,

> on a daily basis, **there is a direct nexus between the jobs of teachers . . . and the influence they exert upon the children who are in their charge**. (emphasis added).

158 F.3d at 375. As the Sixth Circuit correctly observed, "[i]ndeed, directly influencing children is their job." 158 F.3d at 375. In *Vernonia*, this Court recognized the special responsibility of the schools to care for and direct students, stating that

> deterring drug use by our Nation's school children is at least as important as enhancing efficient enforcement of the Nation's law against the importation of drugs, which was the governmental concern in *Von Raab* . . . or deterring drug use by

> engineers and trainmen, which was the governmental concern in *Skinner*. . . . Moreover, the necessity for the State to act is magnified by the fact that this evil is being visited not just upon individuals at large, but upon children for whom it has undertaken a special responsibility of care and direction.

515 U.S. at 661. In view of the schools' special responsibility, it is legitimate that Knox County test the new teachers who will be teaching and influencing its school children. Further, the testing of new teachers comes at an early time in the employment relationship when the school system knows very little about the new teacher. Given these considerations, Knox County has a legitimate interest in employing drug free teachers. To paraphrase this Court in *Von Raab*, the community should not bear the risk that new teachers with impaired perception and judgment will be caring for school children who are, by state law, compelled to attend school.[18] 489 U.S. at 671.

2. *Knox County teachers hold "safety-sensitive" positions.*

Not only does Tennessee law place public school teachers in safety-sensitive positions, but the record evidence shows that Knox County teachers hold, in fact, safety-sensitive positions as that term is understood in the context of drug-testing. Under *Skinner*, the test for whether employees hold safety sensitive

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18. *See also Strong v. Uniondale Union Free School Dist.*, 902 F.2d 208, 212 (2nd Cir. 1990) (school district can require tenured teacher to provide medical records relevant to her month-long absence because district has a strong interest in safeguarding the health and welfare of the students in a teacher's class); *Daury v. Smith*, 842 F.2d 9 (1st Cir. 1988) (recognized a legitimate public interest in providing a safe and healthy educational environment for students in requiring a principal, alleged to have put a "strangle-hold" on a student, to submit to a psychiatric examination); *Lyons v. Sullivan*, 602 F.2d 7 (1st Cir.), *cert. den.*, 444 U.S. 876 (1979) (no constitutional infirmity in requiring tenured teacher to place himself in the care of a psychiatrist as a condition of his continued employment).

positions is whether the employees discharge duties such that "even a momentary lapse of attention can have disastrous consequences." *Skinner*, 489 U.S. at 628.[19]

The testimony of Knox County teachers and principals revealed the myriad of duties and tasks they must discharge in a typical school day with respect to the children in their care, from classroom teaching to bus and cafeteria duty to recess. (Sparks, JA 812-814, 871-878; Grant, JA 958-959; Anderson, JA 004-998). Vested with these duties of caring for children and teenagers, teachers are safety-sensitive because "even a momentary lapse of attention can have disastrous consequences." *Skinner*, 489 U.S. at 628. Anderson's testimony of how his alert response saved the life of a student on the bus is but one example of why even a momentary lapse of attention on the part of a teacher can have disastrous consequences for a student. (Anderson, JA 996-997). For this reason, teachers' perceptions and judgments must not be impaired.

Acknowledging the unique role of teachers, the Sixth Circuit correctly stated,

> [j]ust as the Customs agents in *Von Raab* must be considered in their own unique context, so too must the nature of the work and positions of school teachers and administrators be viewed as unique.

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19. As the Sixth Circuit noted, positions other than railroad engineers and customs agents have been found safety-sensitive: nuclear power plant workers, seamen operating oil tankers, a meter repairman for a gas company, a firefighter and emergency medical technician, a process technician at a petro-refining facility, police officers, a bus driver, pipeline operators, airline industry personnel, correctional officers in regular contact with inmates, Army civilian guards, civilian workers in Army chemical weapons plant, mass transit workers. 158 F.3d at 377-378, n.14 through 21. (citations omitted) *See also Carelli v. Ginsburg*, 956 F.2d 598 (6th Cir. 1992) (upheld drug testing of thoroughbred horse trainers).

158 F.2d at 374. The record evidence reflects that teachers in the Knox County Schools are the "frontline" of school security and first-hand observers of student substance abuse and weapon possession. (Griffin, JA 935-943). In 1996, there were 71 documented occurrences of student substance abuse and 28 recovered weapons. In 1993-94, there were 73 recovered weapons. (JA 1117). As the Chief of Security testified, ("[i]f it weren't for the teachers we wouldn't have these reports in front of us."). (Griffin, JA 943). Thus, in approving the post-offer, pre-employment drug test for new teachers, the Sixth Circuit rightly concluded

> the suspicionless testing regime is justified by the unique role [teachers] play in the lives of school children and the *in loco parentis* obligations imposed upon them.

158 F.3d at 375.

II.

THE FOURTH AMENDMENT DOES NOT REQUIRE A STATISTICAL NEXUS BETWEEN STUDENT INJURIES AND DRUG IMPAIRED TEACHERS OR A PRONOUNCED DRUG PROBLEM AMONG A PUBLIC SCHOOL SYSTEM'S TEACHERS TO JUSTIFY POST-OFFER, PRE-EMPLOYMENT DRUG TESTING OF NEW TEACHERS RESPONSIBLE FOR THE SAFETY AND EDUCATION OF STUDENTS SUBJECT TO COMPULSORY ATTENDANCE.

Petitioners, not the Sixth Circuit, misapprehend this Court's "teachings" (Pet. 22) with respect to the kind of nexus that must be shown to justify drug testing. Petitioners believe that in order to show a "special need" to justify suspicionless drug testing, the Board must demonstrate a problem of drug abuse among its teachers or offer evidence that an impaired teacher allowed harm to befall the students. Petition at 15. In *Von Raab*, this Court

rejected a nexus approach requiring empirical evidence. 489 U.S. at 673-674. Finding unpersuasive the customs agents' contentions that the drug testing program was unjustified because it was not based on "any perceived drug problem among Customs employees" and did not reveal "a significant number of drug users" (no more than 5 employees out of 3,600 tested positive for drugs), this Court stated: "[t]he mere circumstance that all but a few of the employees tested are entirely innocent of wrongdoing does not impugn the program's validity." 489 U.S. at 674-75. Focusing on the harm to be avoided rather than statistics, this Court concluded:

> [w]here, as here, the possible harm against which the government seeks to guard is substantial, the need to prevent its occurrence furnishes an ample justification for reasonable searches calculated to advance the Government's goal.

Von Raab, 489 U.S. at 674-5. Again, in *Chandler*, this Court acknowledged that a demonstrated problem of drug abuse is "not in all cases necessary to the validity of a testing regime. . . ." 520 U.S. at 319. Although this Court indicated that such a demonstrated drug problem would "shore up an assertion of special need for a suspicionless general search program," *Id.*, this Court did not hold that a demonstrated drug problem among a particular employee group is the only method by which the government can justify its assertion of special need to test new safety-sensitive employees. Rather, the nexus requirement is met if "the possible harm against which the government seeks to guard is substantial." *Von Raab*, 489 U.S. at 674-675. As this Court stated, "[t]he need to prevent its occurrence furnishes an ample justification for reasonable searches calculated to advance the government's goal." *Id.*

In the case of Knox County teachers, this Court's rulings do not require the Board to "shore up" its assertion of special need to drug test new teachers acting *in loco parentis*. To the

contrary, the nexus this Court requires is satisfied because the state statutes imposing the duty to protect and the record evidence shows that the possible harm to be avoided is substantial. Thus, the Sixth Circuit correctly found that the Board demonstrated "a clear, direct nexus . . . between the nature of the employee's duty and the nature of the feared violation." 158 F.3d at 378, citing *Harmon v. Thornburgh*, 878 F.2d 484, 490 (D.C. Cir. 1989), *cert. den. sub. nom., Bell v. Thornburgh*, 493 U.S. 1056 (1990). The record evidence and the Tennessee statutes clarify the duties and responsibilities of teachers to protect students from harm and report student offenses. The record evidence shows the nature of the feared violation of that duty, namely, harm to students and undetected weapons and drugs. (Sparks, JA 812-814, 871-878; Grant, JA 948-959; Anderson, JA 994-998; and Griffin, JA 931-943). The record evidence shows that teachers are assigned bus, cafeteria and recess duties to protect students from harm. If teachers are not alert, students can be knifed on buses, (Anderson, JA 994-998), or possess weapons or drugs undetected. (Griffin, JA 931-943). As this Court said in *Von Raab*, "[t]he need to prevent its occurrence furnishes an ample justification for reasonable searches calculated to advance the government's goal." 489 U.S. at 674-675. The possible harm to school children, subject to compulsory attendance, from drug-impaired teachers amply justifies the Board's policy of drug testing new teachers.

Empirical evidence of drug use or drug abuse among Knox County teachers is not necessary under *Von Raab* or *Chandler* in order to justify post-offer, pre-employment drug screening of new teachers. The safety-sensitive nature of the tasks which the teachers perform in a highly regulated state industry justifies such screening. Tennessee law is heavily focused on the safety and security of the public school environment for the protection of the students who compulsorily attend. Required by federal law to have a drug free workplace policy and by state law to provide a safe and secure school environment, and aware of the events which have occurred in its school system that require

teachers to be alert for the safety of its students, Knox County has elected to screen new teachers before entrusting to them the care of school children. Taking these matters into account, the Sixth Circuit based its decision on the record evidence and correctly followed the rulings of this Court in approving the suspicionless post-offer, pre-employment drug testing of new teachers in Knox County, Tennessee.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A — KNOX COUNTY BOARD OF EDUCATION'S DRUG-FREE WORKPLACE SUBSTANCE ABUSE POLICY

KNOX COUNTY BOARD OF EDUCATION'S DRUG-FREE WORKPLACE SUBSTANCE ABUSE POLICY

For Reference Only

Drug-Free Workplace Substance Abuse Policy

Section 30[illegible]1.00

.01 ***Purposes***

1. The Knox County Board of Education is committed to a safe working environment, to making adequate provisions for the safety and health of its employees at their place of employment, and to the safety and health of the students we serve as well as the general public. The Knox County Board of Education regards its personnel as individuals as well as employees. Therefore, the Board believes that alcoholism and drug addiction are illnesses and should be treated as such. The Board further believes that employees who develop alcoholism or other drug addictions can be helped to recover and should be offered appropriate assistance. It is in the best interest of the employee and the board that when alcoholism or drug addiction is present, it should be diagnosed and treated at the earliest possible date. Confidential treatment of the diagnosis and recovery process for alcoholism or drug addiction is essential.

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2. The Knox County Board of Education recognizes that substance abuse in our nation and our community exacts staggering costs in both human and economic terms. Substance abuse can be reasonably expected to produce impaired job performance, lost productivity, absenteeism, accidents, wasted materials, lowered morale, rising health care costs, and diminished interpersonal relationship skills. The Knox County Board of Education and its employees share a commitment to create and maintain a drug-free workplace.

3. The Knox County Board of Education is responsible for the instruction and well-being of the students entrusted to its care. A consistent message needs to be communicated by the Board that the use of illegal drugs, the abuse of alcohol, and the misuse of prescription drugs are unacceptable.

4. Provisions of the Federal Anti-Drug Act, 41 U.S.C.A. § 702, require federal grant recipients to establish a drug-free workplace. Employees must be provided with a statement notifying them of the prohibitions pertaining to controlled substances, consequences of violations, and compliance with the drug-free policy as a condition of employment. Employers must inform employees of drug-free requirements through an awareness program.

.02 ***Policy Goals and Objectives***

1. To establish, promote, and maintain a safe, healthy, working and learning environment for employees and students.

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2. To aid the affected employee in locating a rehabilitation program for employees with a self-admitted or detected substance abuse problem.

3. To promote the reputation of the Knox County School System and its employees as responsible citizens of public trust and employment.

4. To eliminate substance abuse problems in the workplace.

5. To aid in the reduction of absenteeism, tardiness, and apathetic job performance.

6. To provide a clear standard of job performance for Knox County Schools employees.

7. To provide a consistent model of substance-free behavior for students.

.03 ***Pre-Employment Testing***

In the furtherance of achieving the Knox County Board of Education's goals and objectives as enumerated above, all applicants being considered for employment positions identified by the Knox County Board of Education as being safety-sensitive will be required to submit to a urinalysis test for the detection of the illegal use of drugs, as part of the currently required post-offer, pre-employment physical. Applicants for positions which require testing will be given a copy of this policy in advance of the post-offer, pre-employment physical.

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Applicants will acknowledge having read or had this policy explained to them and should understand that as a condition of employment they are subject to its contents. Applicants will sign an acknowledgement prior to substance screening, permitting the summary result to be transmitted to the Medical Review Officer and the Director of Personnel. An applicant refusing to complete any part of the drug testing procedure will not be considered a valid candidate for employment with the Knox County Board of Education and such will be considered as a withdrawal of the individual's application for employment. The applicant will not be permitted to re-apply for employment with the Knox County Board of Education for at least twelve (12) months and not until the applicant shows proof of successful completion of a drug rehabilitation program or proof that the applicant has otherwise rehabilitated successfully and is no longer engaging in illegal drug use.

If substance screening shows a confirmed positive result for which there is no current physician's prescription, a second confirming test may be requested by the MRO. If the first or any requested second confirming test is positive, any job offer will be revoked.

The Knox County Board of Education has several positions which are considered safety sensitive. In general, these are positions where a single mistake by such employee can create an immediate threat of serious harm to students and fellow employees.

Safety-sensitive positions requiring post-offer, pre-employment drug testing are: principal, assistant principal,

teacher, traveling teacher, teacher aide, substitute teacher, school secretary, and school bus driver. The procedure for testing these positions is contained in Section 3011.11 of this Policy. Individuals applying for other positions shall not be required to submit to a post-offer, pre-employment substance screen.

.04 *Employee Conduct*

Substance abuse is the misuse or illicit use of alcohol, drugs, or controlled substances, including marijuana, heroin, or cocaine.

1. Illegal drugs

Drug abuse by employees interferes with the educational and work process, and compromises the safety, productivity, and well-being of staff and students. Employees are expected to conduct themselves in a manner consistent with the following provisions:

(1) Employees shall not engage in the illegal use of drugs at any time and such use will not be tolerated. Further, employees on duty, or on Knox County Board of Education property, or in attendance at system-approved or school-related functions will not manufacture, distribute, dispense, possess or use illegal drugs or drug paraphernalia, nor will they be under the influence of such drugs.

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(2) An employee convicted of any criminal drug law shall notify the Knox County Schools Director of Personnel no later than five (5) days after such conviction. Within thirty (30) days after receiving notice of a conviction, Knox County Schools will take appropriate disciplinary action and/or refer the employee to an appropriate substance abuse rehabilitation program.

(3) Failure of the employee to report the conviction within the time prescribed will lead to disciplinary action up to and including discharge. Convictions of a criminal drug law can result in disciplinary action up to and including discharge. In determining whether and to what extent an employee will be disciplined or discharged for the conviction of a criminal drug law, the Board will consider the following factors: the degree to which the nature of the criminal offense reduces the Knox County Board of Education's ability to maintain a safe working environment; the degree to which the nature of the criminal offense unreasonably endangers the safety of other employees and/or students; the degree to which the conviction unreasonably undermines the public confidence in the Knox County Board of Education's operations; the nature of the criminal offense; the nature of the employee's job with the Knox County Board of Education; the existence of any explanatory or mitigating facts or circumstances; whether the employee promptly reports the conviction; and any other facts

relevant to the employee, including but not limited to years to service and record of performance with the Knox County Board of Education.

2. Alcohol and Drugs

Alcohol, prescription and over-the-counter drugs are legal and readily available. These drugs, when abused over time or used in combination with one another, can result in chemical dependency or poly-drug addiction. Employees are expected to conduct themselves in a manner consistent with the following provisions:

(1) Employees on duty, or on Knox County Board of Education property, or in attendance at system-approved or school-related functions will not be under any degree of intoxication or odor from alcohol. Employees will not manufacture, sell, or use alcoholic beverages or possess open alcoholic beverage containers while on duty, or on Knox County Board of Education property, or in attendance at system approved or school related functions.

(2) Employees on duty will not use or take prescription drugs above the level recommended by the prescribing physician, and will not use prescribed drugs for purposes other than those for which they are intended. Employees will not distribute or dispense such drugs except as provided in Board Policy 6008.05, Part 3.

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(3) An employee convicted of any criminal drug law involving the use of alcohol, prescription or over-the-counter drugs shall notify the Knox County Schools Director of Personnel no later than (5) days after such conviction. Within thirty (30) days after receiving notice of a conviction, Knox County Schools will take appropriate disciplinary action and/or refer the employee to an appropriate substance abuse rehabilitation program.

(4) Failure of the employee to report the conviction within the time prescribed will lead to disciplinary action up to and including discharge. Convictions of a criminal drug law involving the use of alcohol, prescription or over-the-counter drugs can result in disciplinary action up to and including discharge. In determining whether and to what extent an employee will be disciplined or discharged for the conviction of a criminal drug law involving the use of alcohol, prescription or over-the-counter drugs, the Board will consider the following factors: the degree to which the nature of the criminal offense reduces the Knox County Board of Education's ability to maintain a safe working environment; the degree to which the nature of the criminal offense unreasonably endangers the safety of other employees and/or students; the degree to which the conviction unreasonably undermines the public confidence in the Knox County Board of Education's operations; the nature of the criminal offense; the

nature of the employee's job with the Knox County Board of Education; the existence of any explanatory or mitigating facts or circumstances; whether the employee promptly reports the conviction; and any other facts relevant to the employee, including but not limited to years to service and record of performance with the Knox County Board of Education.

.05 Physical examination/screening based upon reasonable suspicion.

Whenever the Knox County Board of Education, through its Director of Personnel or the person authorized to act as the Director in the Director's absence, and/or the Medical Review Officer, reasonably suspects that an employee's work performance or on-the-job behavior may have been affected in any way by illegal drugs or alcohol, or that an employee has otherwise violated the Knox County Board of Education Drug-Free Workplace Substance Abuse Policy, the employee may be required to submit a breath and/or urine sample for drug and alcohol testing. When a supervisor observes or is notified of behaviors or events that lead the supervisor to believe that the employee is in violation of the Drug-Free Workplace Substance Abuse Policy, the Supervisor should notify the Director of Personnel.

An employee who is required to submit to drug/alcohol testing based upon reasonable suspicion and refuses will be charged with insubordination and necessary procedures taken to terminate the employee in accordance with Board

Policy, state law, and the Charters of Knox County, Tennessee, and the City of Knoxville, where applicable.

An employee who tests positive on a reasonable suspicion test will be in violation of this Policy. Violation of this Policy will constitute grounds for termination in accordance with Board Policy, state law, and the Charters of Knox County, Tennessee, and the City of Knoxville, where applicable.

The Knox County Schools Director of Personnel, or the person authorized to act as the Director in the Director's absence, or the Medical Review Officer are the only individuals in the Knox County School System authorized to make the determination that reasonable suspicion or cause exists to order a drug screen and is the only individual in the Knox County School System who may order an employee to submit to a drug screen.

Two types of cases for which reasonable suspicion procedures may be invoked are:

(1) Chronic case

Deteriorating job performance or changes in personal traits characteristics where the use of alcohol or drugs may be reasonably suspected as the cause. These cases may develop over a fairly long period of time.

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(2) Acute Case

Appearing in a specific incident or observation to then be under the present influence of alcohol and/or drugs or investigation of an accident where the use of alcohol or drugs is reasonably suspected to be a contributing cause. Regardless of any previous history, immediate action is necessary.

Circumstances under which substance screening may be considered, in either the chronic or acute cases, include but are not limited to the following:

1. Observed use, possession, or sale of illegal drugs and/or use, possession, sale, or abuse of alcohol and/or the illegal use or sale of prescription drugs.

2. Apparent physical state of impairment of motor functions.

3. Marked changes in personal behavior not attributable to other factors.

4. Employee involvement in or contribution to an accident where the use of alcohol or drugs is reasonably suspected or employee involvement in a pattern of repetitive accidents, whether or not they involve actual or potential injury.

5. Violations of criminal drug law statutes involving the use of illegal drugs, alcohol, or prescription drugs and/or violations of drug statutes.

The circumstances under which substance screening may be considered, as outlined above, are strictly limited in time and place to employee conduct on duty or during work hours, or on or in Knox County Board of Education property, or at school system-approved or school related functions.

Prior to substance screening, employees will sign an acknowledgement that the summary result will be transmitted to the Medical Review Officer and the Knox County Schools Director of Personnel.

Drug and/or alcohol screening shall be conducted by Board approved, independent, certified laboratories utilizing recognized techniques and procedures, more specifically described in the Drug and Alcohol Abuse Testing Procedures contained in this Policy at Section 3011.11. A breath analysis test may also be performed by the Knox County Sheriff's Department.

.06 ***Promotion and Transfer Testing***

When an employee applies for a position through the Knox County Board of Education's selection process for a job that has been identified by the Knox County Board of Education as being a safety-sensitive position, the employee will be subject to drug testing in accordance with the procedures contained in this Policy before the employee

will be considered a valid candidate for that job opening. An employee who tests positive for illegal drugs on a promotion/transfer test, will no longer be considered an applicant for that position. Such employee will also be in violation of this Policy. Violation of this Policy will constitute grounds for immediate termination in accordance with Board Policy, state law, and the Charters for Knox County, Tennessee, and the City of Knoxville, where applicable.

An employee may withdraw the application for the position at any time up until the employee is scheduled for promotion/transfer testing. Once an employee is scheduled for promotion/transfer testing, if that employee refuses to submit to the test, he/she will be disqualified for consideration for the position and will be considered as being insubordinate and subject to discipline. Under no circumstances will this employee be considered as a viable candidate for any future openings in this classification until the employee has signed a release for drug testing at the time of submitting the application for the position in connection with a job posting.

.07 ***Return to Duty Testing***

An employee who has been given the opportunity to undergo rehabilitation for drugs will, as a condition of returning to duty, be required to agree to a reasonable follow-up testing established by the Director of Personnel. The extent and duration of the follow-up testing will depend upon the safety or security nature of the employee's position, and the nature and extent of the employee's

substance abuse problem. The Director of Personnel is to review the conditions of continued employment with the employee prior to the employee's returning to work. Any such condition for continued employment shall be given to the employee in writing. The Director of Personnel may consult with the employee's rehabilitation program in determining an appropriate follow-up testing program, including, the frequency of any substance screening contained in a follow-up testing program. In no instance shall such screening be ordered by the Director of Personnel more than one (1) time within a seventy-two (72) hour period.

Any employee subject to return to duty testing that has a confirmed positive drug test will be in violation of this Policy. Violation of this Policy will constitute grounds for immediate termination in accordance with Board Policy, state law, and the Charters for Knox County, Tennessee, and the City of Knoxville, where applicable.

.08 ***Rehabilitation***

The Knox County Board of Education recognizes that chemical dependency is an illness that may be successfully treated.

1. It is the policy of the Knox County Schools, where possible, in addition to appropriate personnel action, to refer for rehabilitation an employee with a self-admitted or detected drug or alcohol problem.

2. Employees seeking medical attention for chemical dependency will be entitled to benefits to the extent covered under the Knox County Schools group medical insurance plans, if they have chosen to be covered by said plans.

3. For employees enrolled in a formal treatment/ rehabilitation program, Knox County Schools may grant sick leave and then annual leave until the same are exhausted and then may grant leave without pay not to exceed one (1) year.

4. The cost of the drug rehabilitation or treatment program shall be borne by the employee and/or the employee's insurance provider.

The Knox County Board of Education strongly encourages employees using illegal drugs or alcohol to voluntarily refer themselves to a treatment program. A voluntary referral is defined as being one that occurs prior to any positive test for illegal drugs under this Policy, or prior to any other violation of this Policy, including a criminal conviction of that individual on a drug-related offense. Employees are not subject to disciplinary action for voluntarily referral to rehabilitation, even where rehabilitation is for the use of illegal drugs or alcohol.

.09 *Disciplinary Action*

1. Employees in violation of the provisions of this policy will be subject to disciplinary action up to and including termination.

2. The fact that an employee has been referred for assistance and his/her willingness or ability to rehabilitate are appropriate considerations as to what, if any, personnel action may be taken.

.10 *Confidentiality*

Records that pertain to the Knox County Board of Education employee required substance screens are recognized to be private and sensitive records. They will be maintained by the Medical Review Officer in a secure fashion to insure confidentiality and privacy and be disclosed to the Director of Personnel only to the extent necessary to address any work-related safety risks occasioned by either the drug or alcohol use. The Director of Personnel will maintain any such records in a secure fashion to insure confidentiality and privacy. Medical records, and information relating directly thereto, will be maintained in accordance with provisions of Tennessee law and used with the highest regard for employee privacy consistent with law and the purpose of achieving and maintaining a drug-free workplace. All Personnel records and information regarding referral, evaluation, substance screen results and treatment will be maintained in a confidential manner and no entries concerning such will be placed in an employee's personnel file.

.11 *Drug and Alcohol Abuse Testing Procedures*

1. Purpose

The purpose of this procedure is to establish guidelines to be followed in the drug/alcohol testing of

external applicants for safety-sensitive positions with the Knox County Board of Education as well as Knox County Board of Education employees.

2. Responsibility.

The Knox County Board of Education Director of Personnel has the overall responsibility for this program.

3. Designation of Medical Review Officer.

The Knox County Board of Education has designated Dr. Joseph W. Harb, Room 591, City-County Building, 400 Main Avenue, Knoxville, Tennessee 37902, as the Medical Review Officer (MRO). The Medical Review Officer will be responsible for reviewing the results of drug tests before they are reported to the Knox County Board of Education's Director of Personnel; reviewing and interpreting each confirmed positive test to determine if there is an alternative medical explanation for the positive; conducting an interview with the individual testing positive; reviewing the individual's medical history and medical records made available to the individual to determine if the positive result was caused by legally prescribed medication; requiring a re-test of the original specimen if the MRO deems it necessary; and verifying that the laboratory report and the specimen are correct. The MRO is expected to follow the Medical Review Officer Manual published by the U.S. Department of Health and Human Services for tests conducted under this Policy.

If the MRO determines that there is a legitimate medical explanation for the positive test other than the use of a prohibited drug, the MRO will conclude that the test is negative and will not take any further action. If the MRO concludes that a particular test is scientifically insufficient, the MRO will conclude that the test is negative for that individual. IF the MRO determines that there is no legitimate explanation for the positive test other than use of a prohibited drug, the MRO will communicate the test results as a positive to the Director of Personnel. The results of negative tests will be communicated by the MRO to the Director of Personnel.

4. Designation of Laboratory.

The National Psychopharmacology Laboratory, Inc. (NPL), 9320 Park West Blvd., Knoxville, Tennessee has been selected to perform the testing on specimens submitted. NPL will be responsible for performing the required drug test in accordance with applicable Federal Department of Transportation (DOT) procedures for transportation workplace testing programs, 49 CFR part 40 and, more specifically, as contained in this policy. NPL will also be responsible for properly handling specimens for alcohol testing. NPL is a Substance Abuse and Mental Health Services Administration (SAMHSA) certified lab approved for DOT drug testing.

5. Collection Site.

The MPL Laboratory located at 9320 Park West Blvd., Knoxville, Tennessee is the designated collection site for collecting urine specimens.

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6. Authorization for Testing.

When the person reports to the collection site, the drug and/or alcohol screening procedure will be explained and the person will be asked to assist completing any necessary forms. All persons subject to testing for any reason will be asked to sign the necessary authorization forms which will allow the test to be performed and for the information to be provided to the Medical Review Officer and the Director of Personnel about the required drug and/or alcohol test.

7. Specimen retention.

The retention of specimens for possible future analysis is the responsibility of NPL. NPL will retain all specimens for a minimum period of one (1) week. At such time, negative specimens will be discarded. Positive specimens will be resealed, and retained in a separate and secure area for a minimum of one (1) year. Within this one (1) year period, the person tested, the Medical Review Officer, or the Director of Personnel can request in writing that the laboratory retain the sample for an additional reasonable period specified in the request. If no proper written request is received within the one (1) year period, the sample may be discarded.

Any transfer of the original specimen to another laboratory for reconfirmation of positive results will follow the chain of custody procedures described in the regulations contained in 49 CFR part 40.

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8. Notification and Administrative Processing of Positive Results.

All analytical results, negative and positive, will be reported by the laboratory to the MRO within an average of five (5) days after receiving the specimens. The MRO will review the individual's medical history, questionnaire, relevant bio-medical information, and interview the person to determine if there is any satisfactory explanation for the positive result. The Medical Review Officer may conduct an additional medical interview with the individual and may require the original specimen to be reanalyzed if necessary.

The MRO will advise the Director of Personnel of any positive test results on external applicants where alcohol and drug testing has been required, and where in the view of the MRO, there is not legitimate medical explanation for the confirmed positive test result other than the unauthorized use of an illegal drug.

The MRO will advise the Director of Personnel of any positive drug or alcohol test results on employees that were done for any reason in order that proper disciplinary actions can be coordinated and will advise the Director of Personnel of negative test results.

9. Record Retention — Confidentiality.

Records of drug test results are recognized to be private and sensitive records, which will be maintained in a secure fashion to insure confidentiality. Records showing an employee passed a drug test will be kept for at least one

(1) year. Records showing that an employee failed a drug test, the type of test (e.g., reasonable suspicion), the functions of the employee, the illegal drug(s) used by the employee, and the disposition of each employee will be kept for at least five (5) years. These records, or any of them, may be maintained at the MRO or the Director of Personnel's discretion for an indefinite period of time beyond the above specified minimums.

Information regarding an individual's drug testing results are confidential and will be released by the MRO and the Director of Personnel only upon the written consent of the individual, except that results may be released and relied upon by the Knox County Board of Education in any administrative or court action by the employee involving the drug test, or any discipline resulting from a violation of this Policy, including employment and court proceedings.

10. General Drug Testing Procedures:

A. Test Methods and Cutoff Levels:

The initial test performed on the urine at the laboratory will be the Enzyme-Multiplied-Immunoassay Technique (EMIT) screen which will be used to eliminate negative urine specimens from further consideration. All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed below. Tests will screen for the drugs listed below. The cutoff levels (positive tests) are as follows:

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		EMIT	*GC/MS*
1.	Marijuana	100 ng/ml	15 ng/ml
2.	Cocaine	300 ng/ml	150 ng/ml
3.	Phencyclidine	25 ng/ml	25 ng/ml
4.	Amphetamines	1,000 ng/ml	500 ng/ml
5.	Methamphetamine	1,000 ng/ml	500 ng/ml
6.	Phenobarbital	300 ng/ml	200 ng/ml
7.	Secobarbital	300 ng/ml	200 ng/ml
8.	Amobarbital	300 ng/ml	200 ng/ml
9.	Butalbital	300 ng/ml	200 ng/ml
10.	Pentobarbital	300 ng/ml	200 ng/ml
11.	Propoxyphene	300 ng/ml	300 ng/ml
12.	Methadone	300 ng/ml	250 ng/ml
13.	Morphine	300 ng/ml	300 ng/ml
14.	Codeine	300 ng/ml	300 ng/ml
15.	Monacetilmorphine	300 ng/ml	300 ng/ml
16.	Benzodiazepines as:		
	(1) Diazepam	300 ng/ml	250 ng/ml
	(2) Oxazepam	300 ng/ml	250 ng/ml
	(3) Desmephyldiazepam	300 ng/ml	250 ng/ml

B. Collection of Specimens.

Specimens will be collected in accordance with Department of Transportation Procedures for Transportation Workplace Drug Testing Programs 49 C.F.R. Part 40 which are incorporated herein by reference, with the exceptions as noted in this Policy. At least 30 ml of urine will be required to complete the test or the test will be rejected and must be reperformed.

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The designated collection site shall have an enclosure within which private urination can occur, a toilet for completion of urination and a source of water for washing hands.

Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen as specified in 49 C.F.R. §40.25. Examples of reasonable cause to believe a specimen will be altered or substituted include: the presentation of a urine specimen that falls outside the normal temperature range (90.0 deg. F - 100.0 deg. F); presentation of a specimen with a specific gravity of less than 1.0003 and a creatinine concentration below .2g/l; presentation of a specimen which contains the presence of adulterants; observation of conduct clearly indicating an attempt to substitute or adulterate the sample.

NPL will follow the Department of Transportation Procedures for preparation for testing, chain of custody, security, privacy, integrity, and identity of specimen, and any necessary transportation to a laboratory. *See* 49 C.F.R. Part 40 §40.23 and 40.25. The person submitting specimens will complete the urine custody and control forms as required by NPL. A copy of the "Drug Testing Custody And Control Form" is contained in Appendix A to this policy.

11. General Alcohol Testing Procedure:

The Knox County Sheriff's Department will be requested to perform and be responsible for administering

a breath analysis test. If the breath analysis test is positive, a second breath analysis test may be taken. If a test is to be made for drugs, this specimen will be taken at the same time that the alcohol specimen is taken, but will be processed as a separate specimen.

A. Collection of Specimen:

Procedures for taking the urine specimen in the event of a positive breath analysis for alcohol assay, will follow the same procedures as outlined in Part 10 above for the drug specimen and the specimen will be tightly sealed immediately to avoid loss of volatile constituents.

B. Test Methods and Levels:

The breath analysis test level to be considered positive will be .02 which would lead to a confirming test.

The alcohol urine assay will be an EMIT screening followed by a confirmatory gas chromatography test on positive screens. Either test will be considered positive if the results are .04 or more.

12. Specific Testing Procedures:

A. Pre-Employment/Post Job Offer.

Interested individuals are made aware of the requirements of drug testing for a specific position prior to submitting an application for the position. Pre-employment drug and alcohol testing will be required for the designated

safety-sensitive positions. Applicants will be given an offer of employment prior to the test. Employment is contingent upon passing the test.

Applicants for positions which require drug and alcohol testing will report to the designated collection site upon notification by the Knox County Board of Education's Director of Personnel of the time and date to report.

NPL is responsible for gathering the medical history of the applicant and will take the urine sample(s).

All applicants will be furnished a copy of the Drug Free Workplace Substance Abuse Policy in advance of the drug testing and alcohol testing, and will have the screening procedure explained to them.

Applicants will be asked to sign an authorization for the tests which will release the MRO to disclose the results of the drug and alcohol test to the Director of Personnel. In the event an applicant refuses to execute the appropriate authorization or to submit to the drug and alcohol tests, NPL will suspend the procedures at that point and refer the applicant to the Director of Personnel.

The MRO will review the analytical results of the drug and alcohol tests, review the individual's medical history questionnaire, relevant biomedical information and interview the applicant, either by phone or in person, to determine whether here is any satisfactory explanation for a positive result. The MRO may conduct an additional medical interview with the individual, and may require the

original specimen to be reanalyzed if necessary. The MRO will advise the Director of Personnel of any positive test results where there is not a legitimate explanation for the positive test.

The MRO will advise the applicant that he or she has tested positive and, if requested, will allow the applicant a reasonable period, not to exceed three (3) days, to provide additional medical evidence of a proper prescription for the drug(s) which caused the positive test.

Nothing herein shall be construed as requiring the MRO or the Director of Personnel to disclose to the applicant the drug(s) for which the applicant tested positive. Rather, it is the duty of the applicant to disclose to the MRO and, upon request, to provide the MRO with evidence of all drugs taken by prescription.

In the event of a positive test where there is not a legitimate medical explanation, the Director of Personnel will advise the applicant in accordance with the Drug-Free Workplace Substance Abuse Policy of the conditions that must be met before the individual could again by considered for employment with the Knox County Board of Education.

The designated safety-sensitive positions subject to testing are: principal, assistant principal, teacher, traveling teacher, teacher aide, substitute teacher, school secretary, and school bus driver.

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B. Reasonable Suspicion Testing:

This testing will be conducted for any employee whenever the Knox County Board of Education, through the Director of Personnel, or someone authorized in his/her absence, and/or the MRO suspects that there is a violation of the Knox County Board of Education Drug-Free Workplace Substance Abuse Policy. The guidelines for determining reasonable suspicion, as noted above, will be followed.

Once the determination has been made that an employee is to be tested based upon reasonable suspicion, the Director of Personnel should then transport the employee to the collection site, or make other appropriate arrangements for transportation. The collection site personnel should be notified that the reason for testing is reasonable suspicion.

Upon arriving at the collection site, the employee will be asked to sign a release for testing and to assist in completing the necessary forms for testing. After the employee has signed the necessary releases for testing, then the standard procedures for drug and alcohol testing should be followed by the collection site personnel.

Once the procedure has been completed, the employee should be transported back to the Director of Personnel's office where the employee will be placed on administrative leave with pay until the results of the tests are available and given instructions to call the Director of Personnel each work day, before the normal reporting time for that employee, for further instructions.

If the employee refuses to sign the release or refuses to be tested by NPL, the employee should be advised that refusal under Board Policy is insubordination. If the employee continues to refuse, the employee should be transported back to the Director of Personnel's office. The Director of Personnel will place the employee on administrative leave with pay with instructions to call his/her office before the normal reporting time for that employee on the following work day.

If the Director of Personnel feels that the employee is in no condition to operate a vehicle, then the employee should be transported home. Under no circumstances should the employee be allowed to drive, and if the employee insists, the Director of Personnel should tell the employee that if he/she gets in a vehicle to drive that he/she will call the police or the Sheriff's Department and give them the location, license plate number, etc.

In the event of positive test results, the MRO will contact the Director of Personnel who will then review other records of the employee and contact the Knox County Law Director to work out proper disciplinary procedures, if any, in accordance with Board Policy, state law, and the Charters of Knox County, Tennessee, and City of Knoxville, where applicable.

C. Promotion and Transfer Testing:

Once an employee has applied for a safety-sensitive position within the Knox County Board of Education that requires drug and alcohol testing and has successfully

completed the written and skills testing being administered for that job, then the employee is considered as one of the qualified applicants for the position and will be subject to the drug and alcohol testing procedures. Up to this point an applicant can withdraw from consideration for the position without sanctions.

The Director of Personnel will notify the employee on the day the testing is to be accomplished as to the time for the employee to be at the designated collection site. Since this testing will be done before or after the employee's normal working hours, the employee must be contacted before the end of that employee's shift. Employees should be tested as soon after their shift as possible.

Once the employee has been scheduled for testing, if the employee refuses to be tested, the employee will be considered insubordinate and subject to disciplinary procedures. If an employee has been notified to go for testing and fails to show up for the test, this will be considered the same as refusal to test unless a medical emergency or accident prevents the employee from testing, in which case credible documentation will be required that substantiates the reason for being absent from the testing. If in the sole discretion of the Director of Personnel the employee is allowed to be tested at a later date, the above procedure will be repeated. In no case will an employee be allowed more than one (1) opportunity to be rescheduled for testing.

Employees who refuse to be tested, or who do not appear for testing and do not have a documented credible

reason for being absent from the testing time, will be subject to disciplinary procedures, will cease to be considered as a viable candidate for the current position and for any future position openings in this classification until the employee has signed a release for drug testing at the time of submitting any future applications for this classification.

The collection site personnel should notify the Director of Personnel in the event an employee refuses to test or does not show for testing.

In the event of positive test results, the MRO will contact the Director of Personnel who will then review other records of the employee and contact the Knox County Law Director to work out proper disciplinary procedures, if any, in accordance with Board Policy, state law, and the Charters of Knox County, Tennessee, and the City of Knoxville, where applicable.

D. Return to Duty Testing:

This testing will apply when an employee who has been given an opportunity for rehabilitation for drugs and or alcohol is returned to duty. Prior to the employee coming back on the job, the employee must be examined by the MRO and a drug and/or alcohol test done which shows negative results. The Director of Personnel may consult with the MRO and the rehabilitation program officials to determine an appropriate follow-up testing program following Board policy and prepare a follow-up-program which will include, among other things, the appropriate period for testing as determined. This Agreement must be

signed by the employee before the employee is allowed to return to the job.

All testing done as a result of the above conditions will be conducted in accordance with the procedures contained herein for drug testing.

In the event of positive test results, the MRO will contact the Director of Personnel who will contact the Knox County Law Director to work out disciplinary procedures, if any, in accordance with Board Policy, state law, and the Charters for Knox County, Tennessee, and the City of Knoxville, where applicable.

E. Changes to Procedures:

This procedure may be amended from time to time to facilitate changes in the Knox County Board of Education's Drug-Free Workplace Substance Abuse Policy as necessary.

.12 ***Definitions: As used in this Policy***

1. "Illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. §812). Such term does not include the use of a drug taken under the supervision by a licensed healthcare professional, or other uses authorized by the Controlled Substances Act.

2. "Drug" or "Illegal drug" means a controlled substance as defined in Schedules I through V of Section 202 of the Controlled Substances Act.

3. "Conviction" means a finding of guilt, including a plea of no-contest, or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.

4. "Criminal Drug Law" means a federal or non-federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

NOTE: ALL REFERENCED DOCUMENTS IN THIS POLICY ARE AVAILABLE FOR INSPECTION IN THE KNOX COUNTY BOARD OF EDUCATION'S DIRECTOR OF PERSONNEL OFFICE.

APPENDIX B — RELEVANT STATUTES

Tenn. Code § 49-2-203

49-2-203. Powers and duties [See the Compiler's Notes]. — (a) It is the duty of the local board of education to:

(1) [See Compilers Notes] Elect, upon the recommendation of the superintendent, teachers who have attained or are eligible for tenure and fix the salaries of and make written contracts with such teachers;

(A) No individual shall be elected to an interim contract unless the individual so elected is to fill a vacancy created by a leave of absence as set forth in § 49-5-702;

(B) All contracts with educational assistants will be for nonteaching positions;

(C) Educational assistants shall be subject to direct supervision of certificated teachers when directly involved in the instructional program;

(D) No member of any local board of education shall be eligible for election as a teacher, or any other position under the board carrying with it any salary or compensation;

(2) Manage and control all public schools established or that may be established under its jurisdiction;

(3) In local education agencies which retain elected superintendents, the board shall continue to employ janitors, engineers, and such other persons as may be necessary to care for school property, and fix their compensation;

(4) Purchase all supplies, furniture, fixtures and material of every kind through the executive committee;

(A) All expenditures for such purposes estimated to exceed five thousand dollars ($5,000) or more shall be made on competitive bids, which shall be solicited by advertisement in a newspaper of general circulation in the county, except that the newspaper advertisement may be waived in the event of any emergency. School districts which have a purchasing division may use a comprehensive vendor list for the purpose of soliciting competitive bids; provided, that the vendors on such list are given notice to bid; and provided further, that such purchasing division shall periodically advertise in a newspaper of general circulation in the county for vendors and shall update the list of vendors following such advertisement;

(B) All purchases of less than five thousand dollars ($5,000) may be made in the open market without newspaper notice, but shall whenever possible be based upon at least three (3) competitive bids;

(C)(1) No county board of education shall contract for the construction of school buildings

or additions to existing buildings, the expenditure for which is in excess of ten thousand dollars ($10,000) except when such contract be made after competitive bids. Public notice shall be given at least ten (10) days in advance of accepting bids for such construction, and the board shall award the contract to the lowest and best bidder. In the event no bid is within the budgetary limits set by the board for such construction, the board may negotiate with the lowest and best bidder to bring the cost of the construction within the funds available, with the approval of the commissioner of education;

(2) Construction management services which are provided for a fee and which involve supervision of the planning, design, bid and construction phases of the project, but not the performance of actual construction work, are deemed to be professional services and may be performed by a qualified person on the basis of recognized competence and integrity. The provisions of this subdivision shall not be construed to authorize or permit actual construction work by a construction manager who has been hired for a construction project or to modify or suspend any competitive bid provisions of the law applicable to the construction work which is under the supervision of such construction manager as applicable only under this section. Contracts for such services shall be procured through competitive bids as

provided in this subsection or by a request for proposals process. The request for proposals process will invite prospective proposers to participate and will indicate the service requirements and the factors used for evaluating the proposals. Such factors shall include cost, vendor's qualification and any additional factor or factors deemed relevant by the procuring entity for procurement of the service; cost is not to be the sole criteria for evaluation. The contract for such services will be awarded to the best evaluated, responsive proposer;

(3) A contract manager who provides construction management services must be a contractor licensed in Tennessee;

(D) No board of education shall be precluded from purchasing materials and employing labor for the construction of school buildings or additions thereto;

(E) The provisions of subdivisions (a)(4)(A), (B) and (D) apply to local boards of education of all counties, municipalities and special school districts; provided, that subdivisions (a)(4)(A) and (B) shall not apply to purchases by or for a county's or metropolitan government's board of education in counties with a population of not less than two hundred thousand (200,000) according to any federal census, so long as the county, through county or

metropolitan government charter, private act, or ordinance, establishes a procedure regarding purchasing that provides for advertisement and competitive bidding and sets a dollar amount for each purchase requiring advertisement and competitive bidding; and provided further, that purchases of less than the dollar amount requiring advertisement and competitive bidding shall, wherever possible, be based upon at least three (3) competitive bids.

(5) Order warrants drawn on the county trustee on account of the elementary and the high school funds, respectively;

(6) Visit the schools whenever, in the judgment of the board, such visits are necessary;

(7) Except as otherwise provided in this title, dismiss teachers, principals, supervisors, and other employees, upon sufficient proof of improper conduct, inefficient service, or neglect of duty; provided, that no one shall be dismissed without first having been given in writing due notice of the charge or charges and an opportunity for defense;

(8) Suspend, dismiss or alternatively place pupils when the progress or efficiency of the school makes it necessary or when disruptive, threatening or . . .

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PART 5 — TEACHERS' TENURE

Tenn. Code § 49-5-501

49-5-501. Definitions. — As used in this part, unless the context otherwise requires:

(1) "Abolition of position" means a regular bona fide elimination of a position for sufficient, just and nondiscriminatory reasons;

(2) "Board" means the local board of education holding jurisdiction in its respective territory. In the event that a school system operates without a board of education, the authority which performs the functions usually performed by a board shall be indicated by the word "board";

(3) "Conduct unbecoming to a member of the teaching profession" may consist of, but not be limited to, one (1) or more of the following:

(A) Immorality;

(B) Conviction of a felony or a crime involving moral turpitude;

(C) Dishonesty, unreliability, continued willful failure or refusal to pay one's just and honest debts;

(D) Disregard of the code of ethics of the Tennessee Education Association in such manner

as to make one obnoxious as a member of the profession; or

(E) Improper use of narcotics or intoxicants;

(4) "Incompetence" means being incapable, lacking adequate power, capacity or ability to carry out the duties and responsibilities of the position. This may apply to physical, mental, educational, emotional or other personal conditions. It may include lack of training or experience; evident unfitness for service; physical, mental or emotional condition making teacher unfit to instruct or associate with children; or inability to command respect from subordinates or to secure cooperation of those with whom the teacher must work;

(5) "Inefficiency" means being below the standards of efficiency maintained by others currently employed by the board for similar work, or habitually tardy, inaccurate, or wanting in effective performance of duties;

(6) "Insubordination" may consist of:

(A) Refusal or continued failure to obey the school laws of Tennessee, or to comply with the rules and regulations of the board, or to carry out specific assignments made by the board, the superintendent or the principal, each acting within its own jurisdiction, when such rules, regulations and assignments are reasonable and not discriminatory;

(B) Failure to participate in an in-service training program as set up by the local board of education and approved by the state board of education;

(C) Treason, or any effort to sabotage or overthrow the government of the United States; or

(D) Refusal by the teacher to disclose to the board whether or not such teacher is, or has been, a member of the Communist or any other party which advocates the overthrow of the government;

(7) "Neglect of duty" means gross or repeated failure to perform duties and responsibilities which reasonably can be expected of one in such capacity, or continued unexcused or unnecessary absence from duty;

(8) "Probation" is a condition and period of trial during which a teacher is under observation to determine such teacher's fitness for tenure status;

(9) "Superintendent" refers to the local superintendent of schools, or to any other officer performing the functions of a superintendent;

(10) "Teacher" includes teachers, supervisors, principals, superintendents and all other certificated personnel employed by any local board of education, for service in public, elementary and secondary schools in

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Tennessee, supported in whole or in part by state or federal funds;

(11)(A) "Tenure" indicates the statutory requirements, conditions, relations and provisions in this part, under which a teacher employed by a board holds a position as a teacher under the jurisdiction of the board. Administrative and supervisory personnel shall have tenure as teachers and not necessarily tenure in the specific type of position in which they may be employed;

(B) "Limited tenure" is a form of tenure under which a teacher may have a position for a limited period of time and may extend such tenure for a like period of time by meeting certain requirements set forth in this part;

(C) "Permanent tenure" refers to a term and condition of tenure, extending from the time when the teacher acquires the status of permanent tenure until such time as the teacher arrives at the maximum age set forth in this part, resigns, retires or is dismissed under provisions of this part; and

(12) "Transfer" means removal from one (1) position to another position under jurisdiction of the same board. [Acts 1951, ch. 76, § 1 (Williams, . . .

* * *

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Tenn. Code § 49-5-502

49-5-502. Construction with other statutes. — (a) The Teachers' Continuing Contract Law, § 49-5-409, shall not be construed to be affected by the provisions of this part, except that the continuing contract law shall not apply to teachers who have acquired permanent or limited tenure under this part.

(b)(1) This part shall not affect the operation of local or private tenure acts in operation on March 1, 1951, applying to counties, municipalities or special school districts.

(2) This part shall not be operative in any such county, municipality or special school district so long as such local or private act remains in effect.

(3) This part shall become operative in any system where there is, on March 1, 1951, a local tenure law in effect, if and when the local law becomes inoperative. [Acts 1951, ch. 76, §§ 14, 18 (Williams, §§ 2345-14, 2345.18); modified; T.C.A. (orig. ed.), §§ 49-1418, 49-1419.]

Tenn. Code § 49-5-503

49-5-503. Types of tenure. — There are two (2) types of tenure for teachers who are now or hereafter employed in the public schools, as follows:

(1) "Limited tenure" applies to any teacher who is not classified as having "permanent tenure," but who, prior to September 1, 1972:

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(A) Has completed two (2) years of college (but less than bachelor's degree), and holds a valid professional license covering the grades or subjects taught, or holds a valid examination license covering the grades or subjects taught regardless of the number of years of college completed;

(B) Completes a probationary period of three (3) school years or not less than twenty-seven (27) months within a five-year period, the last school year to be as a regularly employed teacher; and

(C) Is then reemployed by the board for service after the probationary period and maintains continuous "limited tenure" status thereafter; and

(2) "Permanent tenure" applies to any teacher who:

(A) Has a degree from an approved four-year college or to any vocational teacher who has the equivalent amount of training established and licensed by the state board of education;

(B) Holds a valid professional license based on training covering the subjects or grades taught;

(C) Has completed a probationary period of three (3) school years or not less than twenty-

seven (27) months within the last five-year period, the last year to be employed as a regular teacher; and

(D) Is reemployed by the board for service after the probationary period. [Acts 1951, ch. 76, § 3 (Williams, § 2345.8); modified; Acts 1971, ch. 22, §§ 1, 2; 1977, ch. 33, § 1; T.C.A. (orig. ed.), § 49-1402; Acts 1987, ch. 308, § 25.]

Tenn. Code § 49-5-504

49-5-504. Probation. — (a) Any teacher, otherwise qualified for "permanent tenure" status or "limited tenure" status shall serve three (3) years or not less than twenty-seven (27) months within a five-year period as a probationary teacher before acquiring "permanent tenure" status or "limited tenure" status.

(b) Upon completion of the probationary period, any teacher who is reemployed or retained in the system is entitled to the tenure status for which such teacher is qualified by college training and licensing; provided, that the superintendent shall notify the board prior to reelection by the board that the teacher, if reelected, will attain tenure status.

(c) Time spent on leave of absence, except sick leave as provided in § 49-5-710, shall not be counted as a part of the probationary period. [Acts 1951, ch. 76, §§ 4, 8 (Williams, §§ 2345.4, 2345.8); Acts 1965, ch. 195, § 1; 1973, ch. 298, § 1; T.C.A (orig. ed.), §§ 49-1403, 49-1406; Acts 1987, ch. 308, § 26.]

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Tenn. Code § 49-5-505

49-5-505. Limited tenure. — (a) "Limited tenure" status shall be for a period of three (3) years. Acquiring not less than eighteen (18) quarter hours of college credit during the three-year period of "limited tenure" entitles the teacher to renewal of the teacher's tenure status, and upon receiving proper statement from the college, verifying credits received, the board shall extend the teacher's tenure status for another three-year period.

(b) A limited tenure teacher shall become a permanent tenure teacher when the teacher earns a bachelor's degree and has otherwise complied with the provisions of this part.

(c) A teacher on "limited tenure" who fails, during any three-year period, to meet the foregoing requirements of acquiring at least eighteen (18) quarter hours' credit shall automatically lose "limited tenure" status and shall not be eligible to again attain "limited tenure" status in any local school system.

(d) Only those teachers who have attained "limited tenure" status prior to September 1, 1972, and who continuously maintain the requirement of this section are covered by the provisions of this section.

(e) The superintendent of each county, city and special school system shall establish a roster of "limited tenure" teachers in the superintendent's respective school system as of September 1, 1972, and shall provide a copy of the roster to the commissioner of education and notify each

person on the roster, prior to December 31, 1972, of the provisions pertaining to retaining "limited tenure" status. [Acts 1951, ch. 76, § 5 (Williams, § 2345.5); Acts 1967, ch. 195, § 1; Acts 1971, ch. 22, §§ 3, 4; 1974, ch. 654, § 77; T.C.A. (orig. ed.), § 49-1404.]

Tenn. Code § 49-5-506

49-5-506. Local standards may apply. — The local board of education has the authority to set standards of employment or to maintain educational requirements of the personnel in service over and above those required by the state board of education whenever the board is in position to support the superior program; provided, that such requirements are general in their application and have the approval of the state board of education. [Acts 1951, ch. 76, § 13 (Williams, § 2345.13); Acts 1961, ch. 226, § 1; 1963, ch. 236, § 1; T.C.A. (orig. ed.), § 49-1405.]

Tenn. Code § 49-5-507

49-5-507. Retirement age. — A teacher's tenure status shall terminate as of July 1, following the sixty-fifth anniversary of the teacher's birth. [Acts 1951, ch. 76, § 12 (Williams, § 2345.12); Acts 1961, ch. 226, § 2; 1963, ch. 236, § 2; T.C.A. (orig. ed.), § 49-1407.]

Tenn. Code § 49-5-508

49-5-508. Breach of contract — Effect on tenure. — (a) A teacher shall give the superintendent notice of resignation at least thirty (30) days in advance of the

effective date of the resignation. A teacher who fails to give such notice, in the absence of justifiable mitigating circumstances, shall forfeit all tenure status under this part; provided, that the board may waive the thirty (30) days' notice requirement and permit a teacher to resign in good standing.

(b) Any teacher who breaks a contract with a board of education without a justifiable reason as listed in this section shall not be given permanent tenure status in any other school system in this state, until such teacher has met all of the requirements in such system for attaining such permanent status plus the serving of five (5) continuous years in lieu of the three (3) continuous years required in § 49-5-503; provided, that the local board of education against which such teacher has broken a contract informs the commissioner of education of such breach of contract and requests the commissioner to so notify all local boards of education in this state. Such local board of education may later inform the commissioner that it is no longer holding the breach of contract against the teacher, in which event such local board of education shall request the commissioner to so notify all local boards of education in this state. If and when such local board of education informs the commissioner that it is no longer holding the breach of contract against the teacher, the penalty in this subsection against such teacher shall immediately become ineffective, null and void.

(c) The conditions under which it is permissible to break a contract with a local board of education are as follows:

(1) The incapacity on the part of the teacher to perform the contract as evidenced by the certified statement of a physician approved by the local board of education;

(2) The drafting of the teacher into military service by a selective service board; or

(3) The release by the local board of education of the teacher from the contract which the teacher has entered into with such local board of education. [Acts 1951, ch. 76, § 9 (Williams, § 2345.9); Acts 1961, ch. 226, § 3; 1974, ch. 654, § 78; T.C.A. (orig. ed.), § 49-1408.]

Tenn. Code § 49-5-509

49-5-509. Teacher transferred to another system. — Tenured teachers moving to another system shall serve the regular probationary period in the new system. The local board of education, upon the recommendation of the superintendent, may waive this requirement and grant tenure status or shorten the probationary period, as it sees fit. [Acts 1951, ch. 76, § 11 (Williams, § 2345.11); T.C.A. (orig. ed.), § 49-1409.]

Tenn. Code § 49-5-510

49-5-510. Transfers within system. — The superintendent, when necessary to the efficient operation of the school system, may transfer a teacher from one location to another within the school system, or from one type of work to another for which the teacher is qualified and licensed; provided, that transfers shall be acted upon in

accordance with board policy and any locally negotiated agreement. [Acts 1951, ch. 76, § 10 (Williams, § 2345.10); Acts 1957, ch. 202, § 1; 1965, ch. 196, § 1; 1969, ch. 286, § 1; 1970, ch. 480, § 1; T.C.A. (orig. ed.), § 49-1411; Acts 1987, ch. 308, § 27; 1992, ch. 535, § 15; 1998, ch. 826, § 2.]

Tenn. Code § 49-5-511

49-5-511. Dismissal or suspension of teachers generally. — (a)(1) No teacher shall be dismissed or suspended except as provided in this part.

(2) The causes for which a teacher may be dismissed are as follows: incompetence, inefficiency, neglect of duty, unprofessional conduct and insubordination as defined in § 49-5-501.

(3) A superintendent may suspend a teacher at any time that may seem necessary, pending investigation or final disposition of a case before the board or an appeal. If vindicated or reinstated, the teacher shall be paid the full salary for the period during which the teacher was suspended.

(4) When charges are made to the board of education against a teacher, charging the teacher with offenses which would justify dismissal of the teacher under the terms of this part, the charges shall be made in writing, specifically stating the offenses which are charged, and shall be signed by the party or parties making the charges.

(5) If, in the opinion of the board, charges are of such nature as to warrant the dismissal of the teacher, the superintendent shall give the teacher a written notice of this decision, together with a copy of the charges, and a copy of a form which shall be provided by the commissioner of education advising the teacher as to the teacher's legal duties, rights and recourse under the terms of this part.

(b)(1) When it becomes necessary to reduce the number of teaching positions or nonlicensed positions in the system because of a decrease in enrollment or for other good reasons, the board shall be empowered to dismiss such teachers or nonlicensed employees as may be necessary.

(2) The board shall give the teacher or nonlicensed employee written notice of dismissal explaining fully the circumstances or conditions making the dismissal necessary.

(3) A tenured teacher who has been dismissed because of abolition of position shall be placed on a preferred list for reemployment in the first vacancy the teacher is qualified by training and experience to fill. Nothing in this subsection shall be construed to deprive the board of the power to determine the fitness of such teacher for reemployment in such vacancy on the basis of the board's evaluation of such teacher's competence, compatibility and suitability to properly discharge the duties required in such vacancy considered in the light of the best interest of the students in the school where the vacancy exists. [Acts 1951, ch. 76, §§ 2, 6, 7, 15 (Williams, §§ 2345.2, 2345.6, 2345.7, 2345.15); Acts 1955, ch. 343, § 2; T.C.A. (orig. ed.), §§ 49-1410, 49-1412 — 49-1415; Acts 1989, ch. 197, § 1; 1990, ch. 948, § 23.]

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Tenn. Code § 49-5-512

49-5-512. Dismissal or suspension — Hearing. — (a) A teacher, having received notice of charges pursuant to § 49-5-511, may, within thirty (30) days after receipt of notice, demand a hearing before the board, as follows:

(1) The teacher shall give written notice to the superintendent of the teacher's request for a hearing;

(2) The superintendent shall, within five (5) days after receipt of request, indicate the place of such hearing and set a convenient date, which date shall not be later than thirty (30) days following receipt of notice demanding a hearing;

(3) The teacher may appear at the hearing and plead the teacher's cause in person or by counsel;

(4) The teacher may present witnesses, and shall have full opportunity to present the teacher's contentions and to support them with evidence and argument. The teacher shall be allowed a full, complete, and impartial hearing before the board, including the right to have evidence deemed relevant by the teacher included in the record of the hearing, even if objected to by the person conducting the hearing;

(5) The chair of the board conducting the hearing is hereby empowered to issue subpoenas for witnesses to compel their attendance at hearings authorized under this section. All parties to the proceeding shall have the right to have subpoenas issued by the chair of the board to compel

the attendance of all witnesses deemed by such parties to be necessary, for a full and complete hearing. All witnesses shall be entitled to the witness fees and mileage provided by law for legal witnesses, which fees and mileage shall be paid as a part of the costs of such proceeding. The costs of such proceeding shall be paid by the losing party;

(6) The chair of the board shall administer oaths to witnesses, who shall testify under oath;

(7) A record of the hearing, either by transcript, recording, or as is otherwise agreed by the parties, shall be prepared, if the action of the board is appealed, and all actions of the board shall be reduced to writing and included in the record, together with all evidence otherwise submitted;

(8) On request of either party to the trial, witnesses may be barred from the hearing except as they are called to testify. The hearing may be private at the request of the teacher or in the discretion of the board; and

(9) The board shall within ten (10) days decide what disposition to make of the case and shall immediately thereafter give the teacher written notice of its findings and decision.

(b) The superintendent or other school officials shall not be held liable, personally or officially, when performing their duties in prosecuting charges against any teacher or teachers under this part. [Acts 1951, ch. 76, § 16 (Williams, § 2345.16); Acts 1972, ch. 588, § 1; T.C.A. (orig. ed.), § 49-1416; Acts 1992, ch. 535, § 83.]

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Tenn. Code § 49-5-513

49-5-513. Judicial review. — (a) A teacher under "permanent tenure" or "limited tenure" status who is dismissed or suspended by action of the board may petition for a writ of certiorari from the chancery court of the county where the teacher is employed.

(b) The petition shall be filed within thirty (30) days from the receipt by the teacher of notice of the decision of the board. The petition shall state briefly the issues involved in the cause, the substance of the order of the board, or the respects in which the petitioner claims the order of the board is erroneous, and praying for an accordant review. The petition shall be addressed to the presiding chancellor and shall name as defendants the members of the board and such other parties of record, if such, as were involved in the hearing before the board.

(c) The petitioner shall give bond for costs as in other chancery suits or oaths of paupers in lieu.

(d) Upon the filing of the petition, the clerk and master shall immediately send, by registered return receipt mail, to the chair of the board, a notice of the filing of the petition and a certified copy thereof. The clerk shall also send a similar notice to the last known post office address of each other party named as defendant. In lieu of notice by registered mail, subpoena to answer may be served personally on each defendant, as in other chancery cases.

(e) The filing of such petition shall suspend the order of the board pending a decision by the chancellor, but the

teacher shall not be permitted to return to teaching pending final disposition of the appeal.

(f) All defendants named in the petition, desiring to make defense, shall do so by answer (in which grounds of demurrer shall be incorporated) to the petition within thirty (30) days from the date of the filing of the petition, unless the time be extended by the court. Any other person who may be affected by the decision to be made by the court may, upon proper leave given, intervene and file an answer in the cause. Amendments may be granted as in other chancery procedure.

(g) The cause shall stand for trial and shall be heard and determined at the earliest practical date, as one having precedence over other litigation, except suits involving state, county or municipal revenue. The review of the court shall be limited to the written record of the hearing before the board and any evidence or exhibits submitted at such hearing. Additional evidence or testimony shall not be admitted except as to establish arbitrary or capricious action or violation of statutory or constitutional rights by the board.

(h) The chancellor shall reduce the chancellor's findings of fact and conclusions of law to writing and make them parts of the record.

(i) Any party dissatisfied with the decree of the court may appeal as provided by the Tennessee Rules of Appellate Procedure, where the cause shall be heard on the transcript of the record from the chancery court. [Acts 1951, ch. 76, § 17 (Williams, § 2345.17); Acts 1981, ch. 449, § 2; T.C.A. (orig. ed.), § 49-1417; Acts 1992, ch. 535, § 83; 1992, ch. 952, § 6.]

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Tenn. Code § 49-5-514

49-5-514. Merger of local with state tenure system. — (a)(1) Should it be desired to incorporate any local teacher tenure system into the state system, the board having jurisdiction over the teachers under such local system shall publish in some newspaper of general circulation in the town or county in which such local tenure system is located a notice of its intent to apply for admission to the state teacher tenure system, and, in such notice, shall fix the date for a hearing thereon, which date shall not be less than ten (10) days after the first publication of the notice.

(2) Upon the day fixed by such notice for such hearing, which hearing may be adjourned from time to time if deemed necessary, the board shall hear interested parties who shall have the right to appear in person or by counsel upon the advisability of such entry or merger into the state system.

(3) After the local board of education concludes its hearing, the board shall conduct a referendum of the teachers within the local teacher tenure system, and if a majority of the teachers vote in favor of merging with the state system, then the board shall request such merger and shall forward a certified copy of the result of the referendum to the commissioner of education for consideration.

(4) If the commissioner should approve such merger, then the commissioner shall give proper notice thereof and at the end of ten (10) days from the giving of such public notice of acceptance, such local tenure system shall be

merged with and become a part of the state teacher tenure system, and the members of such local tenure system shall thereupon be entitled to all the benefits of such state tenure system to the same extent as though they had been members thereof from its inception.

(b) As used in this section:

(1) "Board" means any county board of education in a county operating under a local teacher tenure act or any municipal board of education in a city operating under such act; and

(2) "Local teacher tenure systems" means any teacher tenure system applicable only to a county or to a city or town and authorized by special act of the general assembly. [Acts 1953, ch. 263, §§ 1, 2 (Williams, § 2345.19); Acts 1957, ch. 179, § 1; T.C.A. (orig. ed.), § 49-1420.]

Tenn. Code § 49-5-515

49-5-515. Establishment of system for teachers not previously covered. — (a) The state board of education is hereby authorized and directed to establish a system of tenure for teachers in schools and institutions under its jurisdiction.

(b) The board shall promulgate and publish reasonable rules and regulations for the establishment of a tenure system for such teachers, and has the power to promulgate and publish such rules and regulations as are deemed reasonably necessary for the establishment of such tenure

system, which shall include, but not be limited to, standards and requirements concerning:

(1) The minimum qualifications of teachers eligible for tenure;

(2) The types of tenure;

(3) Leaves of absence;

(4) Time of termination of tenure;

(5) Transfers within the system;

(6) Credit for time served in other school systems within the state;

(7) Grounds and procedures concerning suspensions and dismissals;

(8) Investigations;

(9) Suspensions pending investigations; and

(10) Such other subjects as are deemed by the board to be reasonably related to teacher's tenure.

(c) The rules and regulations shall be adopted by a formal resolution by a majority of the membership, and the same shall be signed by a majority of the members of the state board of education as certified by the chair and attested by the executive secretary of the board, and otherwise they

shall be approved and filed in the manner required by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) After giving written notice of charges against any teacher, the board shall hold a hearing in the same manner and shall have the same powers as provided in § 49-5-512; provided, that where such section refers to the superintendent, for the purpose of this part, reference shall be made to the chair of the state board of education.

(e) A teacher shall be entitled to a judicial review of the action of the board for the same purposes and in the same manner provided by § 49-5-513.

(f) As used in this section, "teacher" means any person employed by the state board of education in a full-time position as an administrative officer or teacher in a school or other educational institution except a college or university; provided, that "teacher," as defined in this section, does not apply to the principal or chief administrative officer of such school or institution.

(g) No teacher under the provisions of this section shall be guaranteed continuity of employment in a particular assignment or position. [Acts 1967, ch. 210, §§ 1-3; T.C.A. §§ 49-1423 — 49-1425.]

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PART 34 — SUSPENSION OF STUDENTS

Tenn. Code § 49-6-3401

49-6-3401. Suspension of students. — (a) Any principal, principal-teacher or assistant principal of any public school in this state is authorized to suspend a pupil from attendance at such school, including its sponsored activities, or from riding a school bus, for good and sufficient reasons. Good and sufficient reasons for such suspension include, but are not limited to:

(1) Willful and persistent violation of the rules of the school or truancy;

(2) Immoral or disreputable conduct or vulgar or profane language;

(3) Violence or threatened violence against the person of any personnel attending or assigned to any public school;

(4) Willful or malicious damage to real or personal property of the school, or the property of any person attending or assigned to the school;

(5) Inciting, advising or counseling of others to engage in any of the acts hereinbefore enumerated;

(6) Marking, defacing or destroying school property;

(7) Possession of a pistol, gun or firearm on school property;

(8) Possession of a knife, etc., as defined in § 39-17-1301 on school property;

(9) Assaulting a principal or teacher with vulgar, obscene or threatening language;

(10) Unlawful use or possession of barbital or legend drugs, as defined in § 53-10-101;

(11) Any other conduct prejudicial to good order or discipline in any public school; and

(12) Off-campus criminal behavior which results in the student being legally charged with a felony and the student's continued presence in school poses a danger to persons or property or disrupts the educational process.

(b)(1) Any principal, principal-teacher or assistant principal may suspend any pupil from attendance at a specific class, classes or school-sponsored activity without suspending such pupil from attendance at school pursuant to an in-school suspension policy adopted by the local board of education. Good and sufficient reasons for such in-school suspension include, but are not limited to:

(A) Behavior which adversely affects the safety and well-being of other pupils;

(B) Behavior which disrupts a class or school sponsored activity; or

(C) Behavior prejudicial to good order and discipline occurring in class, during school-sponsored activities or on the school campus.

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(2) In-school suspension policies shall provide that pupils given an in-school suspension in excess of one (1) day from classes shall attend either special classes attended only by students guilty of misconduct or be placed in an isolated area appropriate for study. Students given in-school suspension shall be required to complete academic requirements.

(c)(1) Except in an emergency, no principal, principal-teacher or assistant principal shall suspend any student until that student has been advised of the nature of the student's misconduct, questioned about it, and allowed to give an explanation.

(2) Upon suspension of any student other than for in-school suspension of one (1) day or less, the principal shall, within twenty-four (24) hours, notify the parent or guardian and the superintendent or the superintendent's designee of:

(A) The suspension, which shall be for a period of no more than ten (10) days;

(B) The cause for the suspension; and

(C) The conditions for readmission, which may include, at the request of either party, a meeting of the parent or guardian, student and principal.

(3) If the suspension is for more than five (5) days, the principal shall develop and implement a plan for improving

the behavior which shall be made available for review by the superintendent upon request.

(4)(A) If, at the time of the suspension, the principal, principal-teacher or assistant principal determines that an offense has been committed which would justify a suspension for more than ten (10) days, such person may suspend a student unconditionally for a specified period of time or upon such terms and conditions as are deemed reasonable.

(B) The principal, principal-teacher or assistant principal shall immediately give written or actual notice to the parent or guardian and the student of the right to appeal the decision to suspend for more than ten (10) days. All appeals must be filed, orally or in writing, within five (5) days after receipt of the notice and may be filed by the parent or guardian, the student or any person holding a teaching license who is employed by the school system if requested by the student.

(C) The appeal from this decision shall be to the board of education or to a disciplinary hearing authority appointed by the board. The disciplinary hearing authority, if appointed, shall consist of at least one (1) licensed employee of the local education agency, but no more than the number of members of the local board.

(D) The hearing shall be held no later than ten (10) days after the beginning of the suspension. The local board of education or the disciplinary hearing authority shall give written notice of the time and place of the hearing to the parent or guardian, the student and the school official designated above who ordered the suspension. Notice shall also be given to the local education agency employee referenced in subdivision (c)(4)(B) who requests a hearing on behalf of a suspended student.

(5) After the hearing, the board of education or the disciplinary hearing authority may affirm the decision of the principal, order removal of the suspension unconditionally or upon such terms and conditions as it deems reasonable, assign the student to an alternative program, or night school, or suspend the student for a specified period of time.

(6) If the decision is determined by a disciplinary hearing authority, a written record of the proceedings, including a summary of the facts and the reasons supporting the decision, shall be made by the disciplinary hearing authority. The student, principal, principal-teacher or assistant principal may within five (5) days of the decision request review by the board of education; provided, that local school board policy may require an appeal to the superintendent prior to a request for review to the board. Absent a timely appeal, the decision shall be final. The board of education, based upon a review of the record, may grant or deny a request for a board hearing and may affirm or

overturn the decision of the hearing authority with or without a hearing before the board; provided, that the board may not impose a more severe penalty than that imposed by the hearing authority without first providing an opportunity for a hearing before the board. The action of the board of education shall be final.

(d) In the event the suspension occurs during the last ten (10) days of any term or semester, the pupil may be permitted to take such final examinations or submit such required work as is necessary to complete the course of instruction for that semester, subject to the action of the principal, or the final action of the board of education upon any appeal from an order of a principal continuing a suspension.

(e) Students under in-school suspension shall be recorded as constituting a part of the public school attendance in the same manner as students who attend regular classes.

(f) Nothing in this title shall require a local education agency to enroll a student who is under suspension and/or expelled in a local education agency either in Tennessee or another state. The superintendent for the school system in which the suspended student requests enrollment shall make a recommendation to the local board of education to approve or deny the request. Such recommendation shall occur only after investigation of the facts surrounding the suspension from the former school system. If the recommendation is to deny admission, and if the local board approves the superintendent's recommendation, the superintendent shall,

on behalf of the board of education, notify the commissioner of the decision. Nothing in this subsection shall affect children in state custody or their enrollment in any local education agency. Any local education agency which accepts enrollment of a student from another local education agency may dismiss such student if it is determined subsequent to enrollment that the student had been suspended or expelled by the other local education agency.

(g) Notwithstanding the foregoing or any other law to the contrary, a pupil determined to have brought to school or to be in unauthorized possession on school property of a firearm, as defined in 18 U.S.C. § 921, shall be expelled for a period of not less than one (1) year, except that the director or superintendent may modify this expulsion on a case-by-case basis. For purposes of this subsection, "expelled" means removed from the pupil's regular school program at the location where the violation occurred or removed from school attendance altogether, as determined by the school official. [Acts 1925, ch. 115, § 8; Shan. Supp., § 1487a52; Code 1932, § 2341; Acts 1959, ch. 94, § 1; 1970, ch. 344, § 1; 1970, ch. 580, § 1; 1974, ch. 654, § 69; 1981, ch. 117, §§ 1-7; 1982, ch. 608, §§ 1, 2; T.C.A. (orig. ed.), § 49-1309; Acts 1986, ch. 671, § 1; 1988, ch. 646, § 1; 1991, ch. 382, §§ 1, 2; 1991, ch. 411, § 1; 1992, ch. 949, § 1; 1993, ch. 383, § 1; 1995, ch. 268, § 1; 1995, ch. 365, § 1; 1998, ch. 830, § 1.]

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Tenn. Code § 49-6-4011

49-6-4011. Short title. — This part shall be known and may be cited as the "Student and Employee Safe Environment Act of 1996." [Acts 1996, ch. 988, § 2.]

Tenn. Code § 49-6-4012

49-6-4012. Formulation and administration of behavior and discipline codes. — (a) The governing body of each local education agency shall be responsible for formulating a code of acceptable behavior and discipline to apply to the students in each school operated by such local education agency.

(b) The superintendent or other administrative head of the local education agency shall be responsible for overall implementation and supervision, and each school principal shall be responsible for administration and implementation within that school.

(c) The governing body of each local education agency shall review and, if necessary, redraft existing behavior and discipline codes prior to January 1, 1997. In formulating the behavior and discipline codes, the governing body of each local education agency shall seek recommendations from parents, employees, law enforcement personnel, and youth-related agencies in the community. [Acts 1996, ch. 988, § 3.]

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Tenn. Code § 49-6-4013

49-6-4013. Code contents. — Each code shall contain the type of behavior expected from each student, the consequences of failure to obey such standards, and the importance of the standards to the maintenance of a safe learning environment where orderly learning is possible and encouraged. Each code shall address the topics of language used by students, respect for all school employees, fighting, threats, weapons on school property or at school functions, damage to the property or person of others, misuse or destruction of school property, drug or alcohol abuse, the sale or distribution of drugs or alcohol, student conduct on school property, conduct in classes, and such other subjects as the local governing body shall choose to include. [Acts 1996, ch. 988, § 4.]

Tenn. Code § 49-6-4014

49-6-4014. Uniform and fair application of codes. — The principal of each school shall apply the code uniformly and fairly to each student at the school without partiality or discrimination. [Acts 1996, ch. 988, § 5.]

Tenn. Code § 49-6-4015

49-6-4015. Different codes for different classes of schools. — The governing body of the local education agency may choose to adopt different but consistent codes of behavior and discipline to apply to different classes of schools, such as elementary, middle, junior high, and senior high, under its jurisdiction. All such codes shall be uniform

to the extent of maximum consideration for the safety and well-being of students and employees. [Acts 1996, ch. 988, § 6.]

Tenn. Code § 49-6-4016

49-6-4016. Civil liability. — In addition to criminal penalties provided by law, there is created a civil cause of action for an intentional assault, personal injury or injury to the personal property of students or school employees when such assault occurs during school hours, on school property or during school functions, including travel to and from school on school buses. A person who commits such an assault or injury shall be liable to the victim for all damages resulting therefrom, including compensatory and punitive damages. Upon prevailing, the victim shall be entitled to treble damages and reasonable attorney fees and costs. [Acts 1996, ch. 988, § 7.]

Tenn. Code § 49-6-4017

49-6-4017. Code distribution and posting. — When a code of behavior and discipline has been adopted by the governing body of a local education agency, a copy of the code shall be posted at each school, and guidance counselors shall be supplied copies for discussion with students. The code shall be referenced in all school handbooks. All teachers, administrative staff and parents shall be provided copies of the code. [Acts 1996, ch. 988, § 8.]

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Tenn. Code § 49-6-4018

49-6-4018. Student actions resulting in expulsion. — In addition to the other provisions of this part, a student committing battery upon any teacher, principal, administrator or any other employee of a local education agency or unlawfully possessing any narcotic or stimulant drug, prescription drug, or any other controlled substance shall be expelled for a period of not less than one (1) calendar year, except that the director or superintendent may modify this expulsion on a case-by-case basis. For purposes of this section, "expelled" means removed from the pupil's regular school or removed from school attendance altogether, as determined by the school official. Nothing in this section shall be construed to prohibit the assignment of such students to an alternative school. [Acts 1996, ch. 988, § 11; 1997, ch. 326, § 1.]

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PART 42 — SCHOOL SECURITY ACT

Tenn. Code § 49-6-4201

49-6-4201. Short title. — This part shall be known and may be cited as the "School Security Act of 1981." [Acts 1981, ch. 368, § 2; T.C.A., § 49-9-401.]

Tenn. Code § 49-6-4202

49-6-4202. Definitions. — As used in this part, unless the context otherwise requires:

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(1) "Dangerous weapon" or "weapon" means any dangerous instrument or substance, which is capable of inflicting any injury on any person;

(2) "Drug" means any controlled substance, marijuana, alcohol, legend drug or any other substance whose possession or use is regulated in any manner by any governmental authority, including the school system;

(3) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a drug, as defined in subdivision (2). An electronic pager in the possession of a student shall be included in this definition if used or intended for use as defined by this subdivision;

(4) "School" means all public schools which conduct classes in any grade from kindergarten through grade twelve (K-12);

(5) "School Principal" or "principal" means the administrative head of a public school, by whatever title such person may be known;

(6) "Student" means any person, regardless of age, enrolled in the public school; and

(7) "Visitor" means any person who is on school property, except for certificated personnel employed by the state or local board of education. [Acts 1981, ch. 368, § 2; 1983, ch. 397, § 1; T.C.A., § 49-9-402; Acts 1988, ch. 727, § 1; 1994, ch. 636, § 13.]

Cross-References. Carrying weapons on school property, § 39-17-1309.

Tenn. Code § 49-6-4203

49-6-4203. Legislative intent. — (a) It is the intent of the general assembly in enacting this part to secure a safe environment in which the education of the students of Tennessee may occur.

(b) The general assembly recognizes the position of the schools in loco parentis and the responsibility this places on principals and teachers within each school to secure order and to protect students from harm while in their custody.

(c) It is the intent of this part to extend further, rather than limit, the authority of principals and teachers to secure order and provide protection of students within each school.

(d) The general assembly further recognizes that a rising level of violent activity and use of drugs is occurring in some public schools, especially in urban areas, and that these activities threaten the well-being of all students in such schools.

(e) The general assembly further finds that:

(1) The removal of dangerous weapons, drug paraphernalia and drugs from school property is necessary to lessen hazards to students and that such removal can only be accomplished by searches of areas of the school buildings or grounds where such materials may be stored;

(2) On occasions when the use of dangerous weapons or drugs has reached a life or health threatening level, searches of students themselves may be necessary to protect the larger student body, and that often such searches must be conducted in emergency situations;

(3) Individual circumstances and local particularities require that individual principals must be relied on to exercise their professionally trained judgments in determining what action is appropriate within the provisions of this part; and

(4) The presence on school property of students with drugs in their bodies may pose a threat to the safety and well-being of that student and other students, may be disruptive of school classes and other programs, and may interfere with the educational opportunities and progress of all students. [Acts 1981, ch. 368, § 2; 1983, ch. 397, § 2; T.C.A., § 49-9-403; Acts 1988, ch. 727, § 2; 1988, ch. 940, § 2.]

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Tenn. Code § 49-6-4204

49-6-4204. Search of lockers. — (a) When individual circumstances in a school dictate it, a principal may order that vehicles parked on school property by students or visitors, containers, packages, lockers or other enclosures used for storage by students or visitors, and other areas accessible to students or visitors be searched in the principal's presence or in the presence of other members of the principal's staff.

(b) Individual circumstances requiring a search may include incidents on school property, including school buses, involving, but not limited to, the use of dangerous weapons, drugs or drug paraphernalia by students, which are known to the principal or other staff members, information received from law enforcement, juvenile or other authorities indicating a pattern of drug dealing or drug use by students of that school, any assault or attempted assault on school property with dangerous weapons, or any other actions or incidents known by the principal which give rise to reasonable suspicion that dangerous weapons, drugs or drug paraphernalia are held on school property by one (1) or more students.

(c) A notice shall be posted in the school that lockers and other storage areas, containers, and packages brought into the school by students or visitors are subject to search for drugs, drug paraphernalia, dangerous weapons or any property which is not properly in the possession of the student.

(d) A notice shall be posted where it is visible from the school parking lot that vehicles parked on school property by students or visitors are subject to search for drugs, drug paraphernalia or dangerous weapons. [Acts 1981, ch. 368, § 2; 1983, ch. 397, §§ 3, 4; T.C.A., § 49-9-404; Acts 1988, ch. 727, §§ 3-5; 1994, ch. 636, §§ 1-4.]

Tenn. Code § 49-6-4205

49-6-4205. Search of persons and containers. — (a) A student may be subject to physical search because of the results of a locker search, or because of information received from a teacher, staff member, student or other person if such action is reasonable to the principal.

(b) All of the following standards of reasonableness shall be met:

(1) A particular student has violated school policy;

(2) The search will yield evidence of the violation of school policy or will lead to disclosure of a dangerous weapon, drug paraphernalia or drug;

(3) The search is in pursuit of legitimate interests of the school in maintaining order, discipline, safety, supervision and education of students;

(4) The search is not conducted for the sole purpose of discovering evidence to be used in a criminal prosecution; and

(5) The search shall be reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student, as well as the nature of the infraction alleged to have been committed. [Acts 1981, ch. 368, § 2; 1983, ch. 397, § 6; T.C.A., § 49-9-406; Acts 1988, ch. 727, § 6; 1994, ch. 636, §§ 5, 6.]

Tenn. Code § 49-6-4206

49-6-4206. [Repealed.]

Tenn. Code § 49-6-4207

49-6-4207. Use of metal detectors. — To facilitate a search which is found to be necessary of students, school visitors, containers or packages, metal detectors and other devices designed to indicate the presence of dangerous weapons, drug paraphernalia or drugs may be used in searches, including hand-held models which are passed over or around a student's or visitor's body, and students, visitors, containers and packages may be required to pass through a stationary detector. [Acts 1981, ch. 368, § 2; T.C.A., § 49-9-408; Acts 1988, ch. 727, § 8; 1994, ch. 636, §§ 8, 9.]

Tenn. Code § 49-6-4208

49-6-4208. Use of animals. — To facilitate a search which is found to be necessary, dogs or other animals trained to detect drugs or dangerous weapons by odor or otherwise may be used in conducting searches, but such animals shall be used only to pinpoint areas needed to be searched and

shall not be used to search the persons of students or visitors. [Acts 1981, ch. 368, § 2; T.C.A., § 49-9-409; Acts 1994, ch. 636, §§ 10, 11.]

Tenn. Code § 49-6-4209

49-6-4209. Report of reasonable suspicion by principal to law enforcement officer. — It is the duty of a school principal who has reasonable suspicion to believe, either as a result of a search or otherwise, that any student is committing or has committed any violation of § 39-17-1307, § 39-17-1309, or of title 39, chapter 17, part 4, upon the school ground or within any school building or structure under the principal's supervision, to report such reasonable suspicion to the appropriate law enforcement officer. School personnel have the duty to report any reasonable suspicion that a student is committing or has committed any violation of § 39-17-1307 to the principal, or, if the principal is not available, to the principal's designee. If neither the principal nor the designee is available, school personnel may report such violations of § 39-17-1307 committed on school property to the appropriate authorities. [Acts 1981, ch. 368, § 2; T.C.A., § 49-9-410; Acts 1994, ch. 636, § 12; 1995, ch. 102, § 1; 1995, ch. 215, § 1.]

Tenn. Code § 49-6-4210

49-6-4210. Disposal of contraband. — Any dangerous weapon or drug located by the principal or other staff member in the course of a search shall be turned over to the appropriate law enforcement officer for proper disposal. [Acts 1981, ch. 368, § 2; T.C.A., § 49-9-411.]

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Tenn. Code § 49-6-4211

49-6-4211. Defense of school personnel by education agency — Indemnity. — (a) The local education agency shall defend principals and teachers against whom suit is brought on account of any action taken in accordance with this part it:

(1) Such employees cooperate in the defense of such suit; and

(2) In the opinion of the local education agency, such actions were not the result of willful, wanton or malicious wrongdoing.

(b) Each local education agency shall indemnify principals and teachers from judgment against them if:

(1) Such judgments result from actions or omissions arising out of performance of the duties imposed by this part and do not result from willful, wanton or malicious wrongdoing; and

(2) Such employees have cooperated with the local education agency in the defense of such suit.

(c) The provisions of this section shall not be construed to indicate any waiver by the state of sovereign immunity or to make the state any insurer of the aforementioned public officials. [Acts 1981, ch. 368, § 2; T.C.A., § 49-9-412.]

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Tenn. Code § 49-6-4212

49-6-4212. Training program for school principals — Notice of policies to parents and students. — (a) The local education agency and the local law enforcement agency shall establish and maintain an orientation and training program designed to familiarize school principals with the provisions of this part and with local policies and procedures for implementing and enforcing this part.

(b) The local education agency shall provide parents and students with reasonable notice of such local policies and procedures. [Acts 1982, ch. 794, § 1; T.C.A., § 49-9-413.]

Tenn. Code § 49-6-4213

49-6-4213. Testing of students for drugs — Referral information — Student assistance program. — (a) A student may be subject to testing for the presence of drugs in the student's body in accordance with this section and the policy of the local education agency if there are reasonable indications to the principal that such student may have used or be under the influence of drugs. The need for such testing may be brought to the attention of the principal through a search authorized by § 49-6-4204 or § 49-6-4205, observed or reported use of drugs by the student on school property, or other reasonable information received from a teacher, staff member or other student. All of the following standards of reasonableness shall be met:

(1) A particular student has violated school policy;

(2) The test will yield evidence of the violation of school policy or will establish that a student either was impaired due to drug use or did not use drugs;

(3) The test is in pursuit of legitimate interests of the school in maintaining order, discipline, safety, supervision and education of students;

(4) The test is not conducted for the sole purpose of discovering evidence to be used in a criminal prosecution; and

(5) Tests shall be conducted in the presence of a witness. Persons who shall act as witnesses shall be designated in the policy of the local board of education.

(b) For the purposes of this section and § 49-6-4203, "drugs" means:

(1) Any scheduled drug as specified in §§ 39-17-405 — 39-17-416; and

(2) Alcohol.

(c) Before a drug testing program is implemented in any local education agency, the local board of education in that local education agency shall establish policies, procedures and guidelines to implement the provisions of this section within that local education agency. The state board of education shall prepare a model policy, procedure

and guidelines which may be adopted by local boards of education.

(d) Tests shall be conducted by properly trained persons in circumstances that ensure the integrity, validity, and accuracy of the test results but are minimally intrusive and provide maximum privacy to the tested student. All tests shall be performed by an accredited laboratory. Specimens confirmed as positive shall be retained for possible retesting or reanalysis for at least ten (10) days.

(e) Students shall be advised in writing at the time of their enrollment that they are subject to testing. Notice to each student shall include grounds for testing, the procedures that will be followed, and possible penalties. Students shall be advised of their right to refuse to undergo drug testing and the consequences of such refusal.

(f) A parent of the student or a person legally responsible for the student shall be notified before any drug test is administered to the student.

(g) The local education agency shall pay the cost of any testing required under the provisions of this section.

(h) In any school where local education agency or school policy allows tests provided for by this section, in-service training of principals and teachers will be conducted in signs and symptoms of student drug use and abuse and in the school policy for handling of these students. The department of mental health and mental retardation shall cause qualified trainers to be available to such schools to conduct this training.

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(i) Test reports from laboratories shall include the specimen number assigned by the submitting local education agency, the drug testing laboratory accession number and results of the drug tests. Certified copies of all analytical results shall be available from the laboratory when requested by the local education agency or the parents of the student. The laboratory shall not be permitted to provide testing results verbally by telephone.

(j)(1) All specimens testing negative on the initial screening test or negative on the confirmatory test shall be reported as negative. When a student is tested and the results of the test are negative, all records of the test, the request for the test, and indications that a student was identified for testing and was tested, shall be expunged from all records in the school system.

(2) If a student is tested and the results of the test are negative, all records of the test, request for a test, or indication a student has been tested, shall be expunged from all records.

(k) The principal, or guidance counselor, of the school in which a student who tests positive in a drug testing program is enrolled shall provide referral information to such student and to such student's parents or guardian. Such information shall include information on inpatient, outpatient and community-based drug and alcohol treatment programs.

(*l*) The department shall cause a student assistance program to be provided in schools authorizing drug testing

of students under subsection (a). At a minimum, this student assistance program shall consist of a qualified student assistance program coordinator who may serve one (1) or more schools where drug testing is allowed. This coordinator shall conduct assessment counseling with any student who tests positive for the presence of drugs or alcohol. Such counseling shall include a determination of the severity of the student's alcohol and drug problem and recommendation for referral to intervention or treatment resources as appropriate. The expansion of these services by the department into additional schools after the initial year shall be subject to availability of funds.

(m) Malicious use of authority granted by the provisions of this section may be grounds for dismissal of the person so acting. [Acts 1988, ch. 940, § 1.]

Tenn. Code § 49-6-4124

49-6-4214. Possession of pagers by students. — Possession of an electronic pager by a student on school property, without the permission of the school principal or the principal's designated representative, is prima facie evidence of its intended use in violation of this part. [Acts 1989, ch. 141, § 1.]

Tenn. Code § 49-6-4215

49-6-4215. Wearing clothing denoting gang membership or affiliation. — The local and county boards of education of this state are hereby authorized to promulgate and adopt rules and regulations to prohibit

students in grades six (6) through twelve (12) from wearing, while on school property, any type of clothing, apparel or accessory, including that which denotes such students' membership in or affiliation with any gang associated with criminal activities. The local law enforcement agency shall advise the local board, upon request, of gangs which are associated with criminal activities. [Acts 1994, ch. 571, § 1.]

Tenn. Code § 49-6-4216

49-6-4216. School policies and procedures — Contents — Notice to students and parents. — (a) Prior to commencement of fall classes for the 1996-1997 school year, and annually thereafter, each local and county board of education shall file with the commissioner of education written policies and procedures developed and adopted by the board:

(1) To ensure safe and secure learning environments free of drugs, drug paraphernalia, violence and dangerous weapons; and

(2) To impose swift, certain and severe disciplinary sanctions on any student:

(A) Who brings a drug, drug paraphernalia or a dangerous weapon onto a school bus, onto school property or to any school event or activity; or

(B) Who, while on a school bus, on school property or while attending any school event or activity:

(i) Is under the influence of a drug; or

(ii) Possesses a drug, drug paraphernalia or dangerous weapon; or

(iii) Assaults or threatens to assault a teacher, student or other person.

(b) Each local and county board of education is encouraged to include within such policies and procedures a zero tolerance policy toward any student who engages in such misconduct. Such policies and procedures shall ensure that such misconduct is promptly reported to appropriate law enforcement authorities and may also provide for deployment of law enforcement officers and/or school safety and security personnel, use of dogs trained to detect marijuana and other drugs, conflict prevention and resolution programs and activities for staff and students, utilization of metal detectors, and/or adoption of uniform clothing styles for students.

(c) At the beginning of fall classes each school year, each local and county board of education shall provide students and their parents with written notification of such policies and procedures. Additionally, each school shall conspicuously post a summary of such policies and procedures within each school. [Acts 1996, ch. 888, § 1.]

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PART 43 — REPORTING STUDENT OFFENSES

Tenn. Code § 49-6-4301

49-6-4301. School officials to report student offenses. — (a) Every teacher observing or otherwise having knowledge of an assault and battery or vandalism endangering life, health or safety committed by a student on school property shall report such action immediately to the principal of such school. Every principal having direct knowledge of an assault and battery or vandalism endangering life, health or safety committed by a student on school property or receiving a report of such action shall report such action immediately to the municipal or metropolitan police department or sheriff's department having jurisdiction. Any fight not involving the use of a weapon as defined in § 39-17-1309, or any fight not resulting in serious personal injury to the parties involved, shall be reported only to the school administrator.

(b) The report made to the law enforcement agency shall include, if known, the name and address of the offender, and the name and address of the victim, if any. The report shall also contain a description of the action and whatever additional information is requested by the law enforcement agency. [Acts 1981, ch. 341, § 1; T.C.A., § 49-1320.]

Tenn. Code § 49-6-4302

49-6-4302. Tennessee school safety center. — (a) The department of education shall establish a Tennessee school safety center to develop and evaluate training

materials and guidelines on school safety issues, including behavior, discipline and violence prevention.

(b) The Tennessee school safety center shall be responsible for the collection and analysis of data related to school safety including alleged violent or assaultive acts against school employees and students. Analysis of data shall include the number of arrests, the charges and whether civil damages were pursued by the injured party or school system. The center shall make periodic reports to the select oversight committee on education on the status of school safety efforts.

(c)(1) The Tennessee school safety center, within the limit of appropriations for such, may establish grants to local education agencies for the development of innovative violence prevention programs, conflict resolution, disruptive or assaultive behavior management, improved school security, peer mediation, and training for employees on the identification of possible perpetrators of school related violence.

(2) The grants provided for in subdivision (c)(1) shall be distributed as follows:

> (A) Funding would be available to each local education agency in the same percentage that the local education agency's share of BEP funding bears to statewide BEP funding.
>
> (B) Funding would be subject to a twenty-five percent (25%) match by the local education

agency, adjusted for the local education agency's fiscal capacity under the BEP formula. The match requirement could be satisfied by local or contributed funds or by personnel or other in-kind expenses assumed by the local education agency.

(C) State funding would also be subject to submission by the local education agency to the school safety center of a proposed plan of expenditures to accomplish one (1) or more of the provisions specified in subdivision (c)(1), and approval of that plan by the center. The center should not unreasonably withhold funding, but should allow local education agencies adequate flexibility to experiment so long as the basic requirements of this section are satisfied.

(D) Any funds appropriated for this program in any fiscal year and not expended shall be carried forward for such purposes in future fiscal years. Any allocation for a local education agency which is not applied for or is not successfully applied for in any fiscal year shall not be carried forward for the benefit of that local education agency in subsequent fiscal years, but shall be carried forward for future expenditures under this program in future fiscal years. [Acts 1996, ch. 814, § 1; 1998, ch. 912, §§ 2, 3.]

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